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COMMITTEE ON JUDICIARY

February 23, 2006

LB 1257, 782, 914, 984, 1114, 1153, 1200, LR254CA

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 23, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1257, LR 254CA, LB 782, LB 914, LB 984, LB 1114, LB 1153, and LB 1200. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Jeanne Combs.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our 14th day of committee hearings. We have eight bills on the agenda for this afternoon. I'm Pat Bourne. I'm from Omaha. To my left is Senator Aguilar from Grand Island; to my immediate left is Laurie Vollertsen, the committee's clerk; to my right is Jeff Beaty, the committee's legal counsel; and my far right is Senator Dwite Pedersen from Omaha as well. I'll introduce...

SENATOR DW. PEDERSEN: Elkhorn.

SENATOR BOURNE: ...from Elkhorn. I'm sorry. I'll introduce the other members as they arrive. Please keep in mind that from time to time Senators come and go, so if they happen to leave while you're giving your testimony, please don't take that personally. If you plan to testify on a bill today, we're going to ask that you sign in in advance where that gentleman in the blue sweater is. Please print your name so it's legible and can be entered accurately into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many folks are here to testify on a particular measure. We'll have the introducer of the bill go first, then we will take proponent testimony followed by opponent testimony, and then we'll have neutral testimony. When you come forward to testify, please clearly state and spell your name for the benefit of the transcribers. All of our hearings are transcribed. Your spelling of your name will help them immensely. Due to the large number of bills we hear here in the Judiciary Committee, we utilize what I refer to as the "Kermit Brashear Memorial Lighting System." Senators introducing bills gets five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes exclusive of any questions the committee may ask.

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The blue light goes on at three minutes, the yellow light comes on at one minute, and then when the light turns red, we ask that you conclude your testimony. The rules of the Legislature state that cell phones are not allowed, so if you have a cell phone, please disable it. Also, reading someone else's testimony is not allowed. If you have a letter from a group or an individual that you would like to introduce, give that to us. We'll enter it into the record, but we won't, we prefer you didn't read it. We've been joined by Senator Foley from Lincoln and Senator Flood from Grand Island, from Norfolk. (Laughter) You know it's been a long day already. With that, I'll get this name right, Senator Brashear to open on Legislative Bill 1257. As Senator Brashear makes his way forward, can I have a showing of hands of those folks here to testify in support of this bill? I see two. Those in opposition? I see 40. (Laughter) I see one opponent. Are there neutral testifiers? I see none. The proponents should be in the front row and have signed in and get ready to testify. With that, Senator Brashear, welcome.

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SENATOR BRASHEAR: Thank you, Chairman Bourne, members of the committee, committee clerk and counsel. It has been brought to my attention that this is the last time that I will testify on a bill, period, I mean, as a sitting senator, and the last time before this committee, and the last time in the hearing room in which I've spent some time. We're going to have that this session. It gives you pause. My name is Kermit Brashear. I'm a citizen-legislator from District 4. I come in introduction and support of Legislative Bill 1257. LB 1257 represents the 2006 legislative recommendations of the Community Corrections Council, of which it's been my privilege to serve as a chair. The bill makes various statutory changes, but the primary recommendation is the creation of a Nebraska Prisoner Reentry Court. The reentry court would be a new court within the judicial branch and is administratively patterned after the Workers' Compensation Court. The reentry court would work similar fashion to drug courts and other specialized courts, but would focus exclusively on the supervision of prisoners released from incarceration. The court would establish a system of intensive judicial

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oversight for offender accountability and provide support services throughout the reentry process. Services overseen by the reentry court would include screening and clinical assessment for substance abuse, education, employment referral, case management, treatment services for substance abuse, and mental health, other healthcare, employment and living skills training, and transportation services. Frequent reporting today, reporting centers, and frequent appearances before the reentry court judge would ensure ongoing accountability as a part of the reentry program. We in Nebraska have had great success with drug courts. We've had great success with drug courts that have been started and supported by the interest and passion and commitment of local efforts. The Community Corrections Council is something that was hatched and begun in part, at least here, and this is a culmination, really, of a sense of the things that have occurred as a result of those efforts by so many people in so many parts of the state. The reentry court builds upon the success of the drug courts and the specialized courts in which the judicial component has proven to be an essential part of maintaining accountability on the part of the participants. The combination of services and treatment with frequent reporting and court appearances has proven effective in Nebraska and in many other states. This success has led to the development of reentry courts in other states, and it is time for Nebraska to follow suit as part of our ongoing community corrections effort. The reentry court has both the short term and long term benefits. The council strongly believes from discussions with corrections and parole officers that there are significant number of offenders currently incarcerated who could be paroled, and I know you heard that, Senator Pedersen, that could be paroled to a reentry court almost immediately. In addition, the long-term effects of reducing recidivism and lessening the social impact of releasing inmates into the community without reentry services ought to be significant. The council strongly believes that this program will be worth the modest cost and that, in the long run, it will produce savings in the corrections budget. Judge John Icenogle, who is a district court judge who leads the Central Nebraska Drug Court, who serves on the Community Corrections Council, who previously served on the Community Corrections Working Group, and has been a large part of this, will discuss in more detail following me how a reentry court would work in Nebraska. There are a few other changes

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in the bill also recommended by the council. Three new members would be added to the council, two at-large and one representing the reentry court. The council would be granted authority to award grants to local entities engaged in community corrections programs, which it currently lacks. This will enable the state to partner with worthy local programs when funds are available. Finally, the assessment tools utilized by the Board of Parole would be subject to validation, as was required last year of the assessment tools used by Probation. I appreciate the committee's consideration. I would urge its advancement of this bill, and I've managed to finish within the time limit. Thank you.

SENATOR BOURNE: Thank you. Are there questions for the speaker? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Senator Brashear, thank you for your testimony and your service to the state. I guess my question is, with the reentry court, can the judge impose a jail sentence or can a judge hold that defendant in contempt in the reentry court? And does that amount to double jeopardy? I know that we're making some changes in our state Constitution. Could you just describe that process?

SENATOR BRASHEAR: I am going to defer that question to Judge Icenogle, with your permission, Senator Flood.

SENATOR FLOOD: Yep. I'm totally fine. Thank you, Senator.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR BRASHEAR: Thank you, Chairman Bourne. I'll waive closing.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Friend. First proponent, please. Welcome.

JOHN ICENOGL: (Exhibit 2) Senator Bourne, members of the Judiciary Committee, I want to thank you for the opportunity to be here today to speak with you about the concept of a reentry court. My name is John Icenogle, and that's I-c-e-n-o-g-l-e. I am a district judge housed out of Buffalo and Hall counties. And I am also a member of the

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Community Corrections Council. I have prepared written statement, which I will give to you, and that way, I will not read it to you. And if you need a more formal statement, it will be there. Attached to that written statement are a couple of articles about reentry courts from the state of Delaware and the state of Ohio. And they can give you a much more detailed and much more in-breadth explanation as to what reentry courts are, why they are successful, and why they have a cost and social benefit to the state. I will say this: If you can imagine what a reentry court might be, it's very similar to a drug court, except it addresses the needs and the issues of people who are currently committed in the Department of Corrections. Eighty to 85 percent of the people currently in the Department of Corrections have a significant substance abuse problem. That substance abuse problem is generally associated with criminal conduct when the individual is not incarcerated to support their habit. We need to address at every level the issue of continued use, of recidivism, and getting the people to change a lifestyle and reintegrate back into and become a part of society, as opposed to solely being a person who is in a society. These individuals in the past have had very little treatment alternatives and very little commitment from the state to refocus their lives when they get out. I want to address a couple of things, just as soon answer questions about this that you might have, because I think the general explanation would be in my printed materials. There may be some concerns raised today by detractors to this program that the release of individuals who will pose a threat to public safety, if you look at LB 1257, it is crafted to avoid that potential. To participate in the court, the parolee's participation must be preapproved by the original sentencing judge, the Parole Board, and the reentry court itself to assure that the program is appropriate for the parole and consistent with the protection of the public. As such, we will not be simply bringing people into the community who are a threat or a safety risk. Also, I think there is a belief that, and there has to be an understanding, to get participation, one of the things that has to exist is an incentive. And one of the incentives that every reentry court uses is an earlier parole. If there is any consideration that by giving an earlier parole to be in a supervised program is in some way detracting from the original sentence, that is, if we can't get our full pound of flesh out of every inmate, I will

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suggest to you that that pound of flesh is very, very expensive because we have people in confinement that could be in the community. And that is the population that we seek to address, and the population we seek to use. Unlike the Senator, I have gone too far.

SENATOR BOURNE: Questions? Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. I guess, Judge, if you would like to continue finishing your testimony, if you have things that you would still like to discuss, I'd be interested in hearing it before I ask any questions.

JOHN ICENOGLE: Well, one of the things that I would also want to point out is that drug courts and reentry courts sometimes get a reputation as coddling the guilty and the wicked. And I would suggest that what we're offering here is a chance that, in exchange for a few months of idle, unproductive incarceration, which is what the inmates will be doing if they just remain housed and not participating in programs, that we give up the chance to have these people participate in a very structured rehabilitation program. For the offender, the program will initially include inpatient substance abuse treatment followed by intensive outpatient treatment, and individual sessions. The offender will be required to participate in group treatment programs, attend AA, and attend NA. They'll be required to report to the court on a regular basis, initially weekly. They'll be regularly tested for use of controlled substances. The inmate is required to obtain employment, pay a portion of his participation costs, meet his traditional financial obligations, such as child support, and accept individual responsibility for his own life. The reentry court works with the families to reintegrate the inmate when appropriate, and the court also controls the individual's associations. When necessary, the offenders would be directed to mental health providers to address co-occurring mental health problems. In addition, the court system has a system of incentives and sanctions which encourage active participation and rehabilitation. My fear is that if we don't use a reentry court as a part of our efforts to get ahead of the substance abuse and methamphetamine problems in this state, that where we're going is building another Department of Corrections institution. It's not necessary. It's expensive. And those institutions do not produce what

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you want, which is a sane, safe, healthy and contributing individual.

SENATOR FLOOD: Thank you. I guess, if I could have one more question, and I'm sure you've got this planned. I think we had a Constitutional amendment that we considered earlier in this committee that dealt with the interplay between the separation of powers in our Constitution. Could you just, that's the only thing that has been brought to my attention from my district is, how will this work to make sure a reentry court does not amount to double jeopardy, or doesn't rise to that level? How does that work constitutionally?

JOHN ICENOGL: I really think it's not a constitutional moment. And the reason is that the reentry court is a partnership between the administrative branch, the Department of Corrections, the Board of Parole, and the court system. For an inmate to participate in the system, what will essentially happen is the inmate will be paroled to the supervision of the drug court. The inmate applies for that. He agrees, or she agrees, to comply with all of the requirements of the drug court. They agree that as a part of their participation, they will accept whatever intermediate sanctions that the reentry court might mete out if necessary, plus the rewards that they might receive from having participated. If they are terminated from the program, or if they voluntarily turn their back on the program and walk away, that is a violation of parole. And that ultimate sanction comes back through the Parole Administration just like it does today. The intermediate sanctions are just like what we are using the post-plea drug courts. It's done by voluntary agreement from the individual. I would also suggest, because I know we've discussed some other things on another facility that you have some interest in, this is the type of program that fits like a glove with the Department of Correction's own inpatient treatment programs. When the people complete those inpatient treatment programs right now, they either go out on their own with very little supervision, or they go back to the general population. With this type of court, they actually go into what would be a fully supervised rehabilitative program with direction, with control, with supervision, and with testing. And it would be a very good compliment to expanded inpatient programs for inmates.

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SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Judge Icenogle, could you tell me what is the difference in that program and what's going on right now?

JOHN ICENOGL: With traditional parole?

SENATOR Dw. PEDERSEN: With traditional parole. They still have to parole to you, is that right?

JOHN ICENOGL: No. No. Parole now is a fully executive function at this point.

SENATOR Dw. PEDERSEN: Um-hum.

JOHN ICENOGL: Once the person fulfills their time, they're eligible, they're paroled, they are then administratively supervised by members of the executive branch, and they end up coming back on a violation to the Parole Board for consideration. One of the things this does is it gives, just like probation revocations, which we do have a part of, those revocations are kind of all-or-nothing moments. Either we revoke your probation or your parole and put you in prison, or we don't. This type of court is first of all a monitoring process where we can say, you know, what you did wasn't good, but we don't need to send you back to the penitentiary. What we do need to do, however, is have you accept and fulfill some form of intermediate sanction.

SENATOR Dw. PEDERSEN: Stop right there, please. Now doesn't the Parole Board do that right now?

JOHN ICENOGL: I think they do some of that. I don't know how much incarceration they use with that. To my knowledge, they don't do that directly. I don't know.

SENATOR Dw. PEDERSEN: But they can send somebody either back inside or send them to treatment.

JOHN ICENOGL: They could, I think.

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SENATOR DW. PEDERSEN: Okay, go ahead. Go ahead.

JOHN ICENOGLE: So the other component of the reentry court is the fact that there is a court, there is greater supervision. Now, one of the things that I will be honest with you and I will tell you, in the past, the Parole Administration and the Probation Administration did not have the manpower or the ability to provide the constant supervision that these type of courts provide. First of all, the individual when they come out of the institution will be tested at least three times per week. They will have involvement with their...

SENATOR DW. PEDERSEN: Okay, stop there, again. Now why couldn't we just hire more staff on parole, under our Parole Administration, and give them, let's say, intensive parole, like we give intensive probation, instead of using another administration to do it all?

JOHN ICENOGLE: Two things. One, in the past, we've tried intensive, and intensive has never worked because intensive...

SENATOR DW. PEDERSEN: Could that be because we didn't have enough staff?

JOHN ICENOGLE: Yeah. It got watered down to the point where intensive was traditional and traditional was next to nothing. Right.

SENATOR DW. PEDERSEN: Go ahead.

JOHN ICENOGLE: The second thing is, and I don't know how to explain this, but this is a component that the reentry courts have found to be true and the drug courts have found to be true: There is something about the relationship between the court and the authority of the court and the offender that creates a better milieu for rehabilitation. For some reason, the involvement of the court, the responsibility to the court, the opportunity, and what I've seen in our own drug court, is the opportunity to understand that they are a part of something good, has been more successful, and has continually provided the better rehabilitative system. Why do we have the revocation and recidivism rates on probation for the same offenders that's

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much higher than those people who are going through the drug courts? You know, it's an intangible. I think, (1) it's far more supervised. It's far more intense.

SENATOR Dw. PEDERSEN: More intensive, yeah.

JOHN ICENOGLE: More intensive, and I think it has something to do with the relationship between the offender and the court.

SENATOR Dw. PEDERSEN: Thank you. Excuse me, I do have another question. What sentence structure-wise group of inmates would you be most likely to affect?

JOHN ICENOGLE: The bill as drafted provides for, as eligibility, the person's maximum sentence at this time cannot be more than five years. I think the thought process, it does not necessarily mean simply a Class IV felony--it could be a Class III felony or a Class II felony where there was a maximum sentence of two to five years, or whatever--but what the idea is is that, one of the things, let's see if I can express this better. One of the things we're trying to do with this is to address the people that we are mad at, not the people that we are afraid of. And when people start drawing sentences of over five years for their criminal conduct, I would suggest, and I think community corrections thinks, we're afraid of those people. But people on the lesser end at this time of that five years are people that we're generally mad at. They're people who've been caught with possession of meth, people who are addicts, people who have committed forgeries and thefts. They're not people who've gone out and harmed people, so that's the population we can draw from. Right now, if we had a reentry court up and operating, the information that Community Corrections Council received from the Department of Corrections is that we could move 200 to 225 people out of the institution and into a community-based program. Because those are people who we are not afraid of. Those are the people we're mad at for what they did, and people who need rehabilitation.

SENATOR Dw. PEDERSEN: Would this program, then, tell corrections that they don't need to do substance abuse inside anymore, that you're going to take that over and (inaudible) to that.

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JOHN ICENOGLE: No. No. Not at all. As a matter of fact, for those people with the longer term sentences, we would suggest that they continue the program internally. There are a lot of people who, as you know, if I sentence someone to 20 months to four years, with good time, they're probably going to be eligible for parole in ten months. Not much of anything is going to happen to that person over that ten-month period other than the fact they're going to be in prison for ten months. Some of those people will not have time to go through an inpatient program while in the institution. Those people, as they came out, will be assessed and, when appropriate, will be into either an intensive outpatient or inpatient program. Part of that, in most states, includes, as the individual comes out of the institution, participation in a halfway house housing type of situation, where there is still more supervision, more structure, more monitoring.

SENATOR Dw. PEDERSEN: This wouldn't affect those inmates who choose to "jam" their sentence?

JOHN ICENOGLE: Absolutely not.

SENATOR Dw. PEDERSEN: I as a citizen have some concern about the ones that we're afraid of not getting the same situation, more so the ones that I'm not afraid of, and "jamming" their sentences and coming out in society the same way they went in.

JOHN ICENOGLE: Yeah. One of the things, and this kind of goes beyond this bill, I would suggest to you that we need to rethink our overall sentencing structure in the state where we can encourage people to participate in programs more. Also, I would suggest that the people you're afraid of, if they will go through the programs, if they're going to "jam" their time, the only thing we can do is offer them the best and see if they'll accept it while they're in the institution. If we got to the point where we had an up-and-running reentry court and we wanted to start dealing with people coming out or looking at an earlier parole, saying, hey look, you've jammed your time, but would you like to do this program for a period of six months if we the space available, I say take those those people on and give them that chance.

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SENATOR DW. PEDERSEN: People that I've worked with the most, I don't want to misuse "jam," here, and those who "jam," there's very few who choose to "jam" their time, but there's a lot of them who have to because of the Parole Board will not parole them because of their programming and they can't, it's not that they can't get program, they've done a lot of programming and they resentence them--I call it resentencing when say, just because of the seriousness of your crime, we're not going to let you out--and they're forced to jam their time. And them people sometimes just give up, and we don't get the programming they need. This won't, hopefully, this stretch that out more later.

JOHN ICENOGLE: This is a start and, you know, I think, to be candid, when you start something like this, the first thing you have to do is say, you know, we want to make sure we have a successful program. We want to make sure we know what we're doing and how to do it. And as for going through that beginning process, we want to be dealing with a population that puts the community least at-risk if we make a mistake. But as we go later and longer into that type of a program, I would suggest, I think everybody needs an incentive to go, that's in, I don't care what they're there for. They need an incentive to get this type of help and treatment.

SENATOR DW. PEDERSEN: I would agree, then. Thank you. That part I agree with.

SENATOR BOURNE: Further questions? Seeing none, thank you, Judge.

JOHN ICENOGLE: Thank you.

SENATOR BOURNE: Next testifier in support.

JOHN KREJCI: (Exhibit 3) Good afternoon, Senator Bourne, Senators. I'm John Krejci, that's K-r-e-j-c-i, and I'm testifying in behalf of the Nebraska Chapter of National Association of Social Workers. And social workers are always looking for the good of society and humane treatment, and we strongly support community corrections. I also, at this time, this is social work lobby day, over 200 social work student have come here, and if they raise their hands,

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they're coming--you want to raise your hand, there you go...

SENATOR BOURNE: Welcome.

JOHN KREJCI: ...thank you. I've followed the Community Corrections Council and attended most of their meetings just on my own because it's an interest to me as a social worker and a retired faculty of social work. And I've never seen a higher level dialog and a more well-run and fruitful discussion. And on the back of my testimony is an article that I did a while back. It'll give you some background on community corrections. And community corrections is the thing that I think we really need to work on. We're having a third chance and, as you know, there's another bill up for funding for community correction which means, you know, nonviolent felony drug offenders would be taken care of at the front end before they go into prison. This bill deals with the back end. In other words, helping those who (inaudible). I understand there's like 200 prisoner now, inmates, who need substance abuse treatment but it's just not available for them and they may be "jamming" out and, so, this would help that. But what I really see is community corrections, this is a part of community corrections. And community corrections will really help with the prison overcrowding, which you know, it will lessen the money and also, and then give them the supervision because we know that nonsupervised inmates come out are more likely to "recidivate" and they'll be back in again. So those are the, as I see, my main focus in support is for community corrections. This is a part of that, and I hope you can see your way clear to move this out of committee and then to deal with the funding bill for community corrections that will come up. Thank you very much.

SENATOR BOURNE: Thank you. Questions? Seeing none, thank you. Next testifier in support.

BRAD MEURRENS: (Exhibits 4, 5, 6) Good afternoon, Senator Bourne, members of the Judiciary Committee. For the record, my name is Brad Meurrens, that's M-e-u-r-r-e-n-s, and I'm the public policy specialist and registered lobbyist for Nebraska Advocacy Services, Incorporated, the Center for Disability Law, Rights, and Advocacy. We are the the designated protection and advocacy organization for people with disabilities in Nebraska. We strongly support LB 1257.

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The number of persons with mental illness within Nebraska's correctional system is significant. National estimates report that, on average, 16 percent of incarcerated inmates have a diagnosable mental illness. Nebraska's average is a little bit higher, 17.5 percent, according to LR 191 last session. With a growing population of prisoners with mental illness coupled with the paucity of treatment and resources targeted to this population within the Nebraska's criminal justice system, the need to systemically address the mental health needs and treatment of Nebraska's offenders from incarceration to community is acute. Nebraska Advocacy Services has developed a task force to study the issue of mental illness within Nebraska's criminal justice system consisting of mental health consumers, mental health and criminal justice professionals, advocates, and mental health service providers. Consistently, the task force has identified several areas needing systemic improvement, including mental health assessment and screening upon entering the criminal justice system and access to treatment and services during and after incarceration. One of the most pressing needs identified both within the literature and our task force is the need for seamless integration into the community once an offender is discharged. Currently, offenders with mental illnesses are given two weeks' worth of medications upon release, leaving ex-offenders who need mental health medications in the lurch once those medications run out. However, little attention is given to assisting inmates in discharge planning, accessing treatment, public benefits, education, employment, and housing in their communities, for example, which significantly increases the risk of recidivism, and with more attention, would allow ex-offenders to access services and medication post-release. We are pleased to see these areas addressed in the legislative findings and the list of services to be provided by the reentry court. We would also suggest that this committee consider adding mental health professionals to the list of stakeholders on page 3, line 4, and including rehabilitation services to the list of services available to defendants on page 10, line 17. Rehabilitation services are distinct from habilitation services as habilitation services provide initial skills acquisition, whereas rehabilitation services assist individuals to regain skills lost due to their disability. This concludes my testimony this afternoon. I have included with my written testimony a copy of the Nebraska Advocacy

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Services Criminal Justice Taskforce report and an issue brief from the Bazelon Center for Mental Health Law, "Best Practices: Access to Benefits for Prisoners with Mental Illness." I would be happy to answer any questions the committee might have.

SENATOR BOURNE: Thank you. Questions for Mr. Meurrens? Seeing none, thank you. Next testifier in support.

LYNN DARLING: I am Lynn Darling, L-y-n-n D-a-r-l-i-n-g, and I am here as a parent whose son was incarcerated without any mental health care. He is an alcoholic sociopath and it would have saved tremendous amount of pain and agony had this process been in place. And I hope you seriously consider this. This is essential. I've been the victim of it, or without it, I should say.

SENATOR BOURNE: Thank you. Questions for Ms. Darling? Seeing none, thank you. Appreciate your testimony.

LYNN DARLING: Um-hum.

SENATOR BOURNE: Other testifiers in support? First testifier in opposition. If there are any other opponents to the bill, please make your way forward to the front row. Welcome.

TIM HOEFT: Senator Bourne, members of the Judiciary Committee, my name is Tim Hoeft. I'm the Phelps County attorney and I'm also the president of the Nebraska County Attorneys Association. I'm here today on behalf of the association to testify in opposition to LB 1257. We had lengthy discussions amongst the members of our association during a meeting concerning this bill. We at one point thought about coming in in a neutral position, but we had some concerns that we thought warranted us to take a position of opposition to the bill. One of the concerns we have is that the bill as it's written does not narrowly define the scope of individuals that will be eligible to participate in the program. If the concern is for drug offenders and those with mental health, then we would suggest that the bill be written to define that group of people. That way it is written, anyone with a sentence of five years or less would be eligible to participate in the program. A five-year sentence includes anything that's a

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Class IIIA felony or below. A Class IIIA felony does include the offense of child sexual assault. We have some concerns that those that the program was never intended to benefit might benefit from this program the way the bill is written. It's the committee's position, they had some concerns about accountability of the judge that would be administering the program. We know that that judge would sit for retention under the bill, but if the judge sits here in Lincoln, Nebraska, and he gives early release to a defendant from Holdrege, Nebraska, where I'm from, is there enough public sentiment to not retain judge who's not, how will we hold those judges accountable to people in outstate Nebraska or areas where the population is not so dense. We believe there should be some accountability, and one of the accountabilities for committing criminal behavior is incarceration. We believe that the programs that are spoke of are important, but that maybe the money should be spent to improve the programs that are already available through the corrections system. Any questions?

SENATOR BOURNE: And what group did you say you were with, Mr. Hoeft?

TIM HOEFT: Nebraska County Attorneys Association.

SENATOR BOURNE: Okay. Are there questions for Mr. Hoeft? Senator Chambers.

SENATOR CHAMBERS: When you mention accountability and speak of the retention of a judge, how many judges have not been retained in the area of the state that you're concerned about as a result of the people not voting to retain that judge?

TIM HOEFT: In my judicial district? None that I'm aware of.

SENATOR CHAMBERS: Are you aware of any judge in any other judicial district in what is called greater Nebraska not being retained because they were upset with an opinion (inaudible)?

TIM HOEFT: I believe there was a Judge Wheeler in the, I can't remember the district number, but the North Platte area, that was not retained.

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SENATOR CHAMBERS: And how long had he been a judge? A long time.

TIM HOEFT: Don't quote me on this, but I'm going to say, Judge Wheeler?

SENATOR CHAMBERS: Um-hum.

TIM HOEFT: I don't know how long he was on the bench.

SENATOR CHAMBERS: But was it one decision that he rendered, for example, not giving somebody a long enough sentence, or was there an accumulation or, as the Declaration of Independence says, a long train of abuses?

TIM HOEFT: I believe it was a culmination of things that led to his recall.

SENATOR CHAMBERS: If there was some way to let the people in the part of Nebraska that you are concerned about vote on whether or not to retain a judge, would that take away your opposition, or you're really opposed to the bill on more substantive basis than not being able to vote a judge out?

TIM HOEFT: The accountability issue was one that was raised by the committee of the County Attorneys Association. I think the greater issue is the eligibility issue. Who is eligible? The way I interpret Section 34, paragraph 8 of the bill, it says that any offenders at Diagnostics and Evaluation with a maximum sentence of five years or less are eligible for immediate parole to the reentry court regardless of the amount of time served or the good time earned. I have some concern with that in the fact that I think when you commit or engage in criminal behavior, there has to be some criminal sanctions, and those sanctions sometimes include incarceration, and...

SENATOR CHAMBERS: Well, here's what I'm getting at, and then I won't just hold you and make you feel you have to go beyond what you need to to answer.

TIM HOEFT: Okay.

SENATOR CHAMBERS: Whether I agree with your conclusion or

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not, that answer, or that concern is far more substantive to me than the one about not being to vote out a judge who may have made a decision that people didn't like.

TIM HOEFT: I would say that's the more substantive reason for our opposition to the bill. And the retention issue was one that was just mentioned during the committee meeting.

SENATOR CHAMBERS: A county attorney mentioned that?

TIM HOEFT: Yes.

SENATOR CHAMBERS: There's no way to vote out a county attorney is there? I'm just kidding. (Laughter) Just lightening the mood, but thank you. That's all that I have.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Mr. Bourne. Mr. Hoeft, if we're talking about short sentences as this bill is, the ones who, one to five years, is that right?

TIM HOEFT: Yes.

SENATOR DW. PEDERSEN: Would the county attorneys support the fact that, they already support the fact that when a judge gives a person probation instead of incarceration, do they not?

TIM HOEFT: Well, if the person is eligible for probation. Sometimes, these individuals get probation against the wishes of the county attorney.

SENATOR DW. PEDERSEN: Um-hum.

TIM HOEFT: But we do support the probation program and the concept of probation, yes.

SENATOR DW. PEDERSEN: I'm just hassling around the fact that maybe with, should maybe give them probation to begin with or else send them to drug court to begin with instead of messing around with that short sentence anyway, especially if you're looking at paroling them as soon as they come in.

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TIM HOEFT: Well, and at the risk of opening up another can of worms, there is the option of the work ethics camp, which is part of the intense supervised probation, which provides similar services to those being proposed in the bill.

SENATOR DW. PEDERSEN: Yeah. Thank you.

SENATOR BOURNE: Further questions? Mr. Hoeft, is there a representative from the County Attorneys Association on the Community Corrections Council?

TIM HOEFT: I believe Joe Kelly is on that, yes.

SENATOR BOURNE: Joe Kelly. So they, I mean, so you have input at that level.

TIM HOEFT: We do have some representation.

SENATOR BOURNE: I will tell you, I'm not as well-versed in this subject of community corrections as a lot of others. But it strikes me that what we're doing today isn't working. I don't know if there's a budget in the state that has increased more rapidly than Department of Corrections. I think overall we're running at, what, 140 percent of capacity in our prisons. I think, frankly, unless we do something to address some of these issues, it's going to bankrupt the state. So I guess, so I'm struggling a little bit as to, if this isn't part of the equation in your mind or in the County Attorneys Association's minds as a group, what is the answer?

TIM HOEFT: Well, I'm not saying that this program or concept wouldn't work or isn't part of the equation. I guess the form that the form that this bill is in, we have some concerns with because we believe it's overly broad. We believe that it needs, the definition of who qualifies to participate in this type of program needs to be more narrowly defined.

SENATOR BOURNE: But isn't there discretion throughout our entire system, whether it's probation-parole that's discretionary? What you charge somebody, discretionary? Whether the judge gives somebody this level of sentence or that? I mean, isn't there discretion throughout?

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TIM HOEFT: Yes.

SENATOR BOURNE: So I'm struggling as to why, then, it's appropriate to have it everywhere else but not in this regard.

TIM HOEFT: I just don't know that...the National District Attorneys Association has taken the position that we shouldn't create programs in a response to the excuse that no one provided me with the necessary services. When you commit criminal behavior, there is going to be collateral sanctions that go along with that behavior. One of those sanctions is the loss of civil rights, and maybe you struggle more in finding employment when you are done serving your debt to society or when you're released from a term of incarceration. And I don't believe that we should create a program to, in response to the excuse, I'm having trouble reentering society because nobody provided me with A, B, and C when I was released from prison.

SENATOR BOURNE: But aren't those legitimate statements? I mean, yeah, we hear all the time about increasing penalties. And I was talking to a member of the Pardons Board and they said, one of the leading reasons people come in and ask for a pardon for a particular crime on down the road is because they can't get employment. I mean, aren't those legitimate things that an offender who's trying to reenter society, that's trying to mainstream, for lack of a better word, aren't those legitimate criticisms?

TIM HOEFT: I think it's a legitimate concern, but I think it's a collateral sanction or consequence for the criminal behavior that they engaged in initially, and it's something that people need to take into consideration before they engage in that conduct.

SENATOR BOURNE: Fair enough. Further questions? Senator Chambers.

SENATOR CHAMBERS: When society decides through its legislature that certain conduct is going to be disapproved, or unapproved, and places a criminal sanction on it, that doesn't mean that the legislature has thought this thing through and is active with deliberation and wisdom. It just means that there were enough votes to get such and such a

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thing done. Then there are, after the fact, consequences. As is happening in a lot of states and eventually will in Nebraska where there's a response to what they call repeated crimes, and prosecutors want to go along with this so-called three strikes and you're out. Now they have literally geriatric wards that they're having to establish in prison because they have all these old people, and some of them, the third offense that was the third strike was something so trivial that there's an outcry even by judges who said, but I have to sentence you this way because it's what the legislature said. Prosecutors at that point don't come in and say, well, we pushed for this. What happens is that prosecutors are interested in convicting people. In Douglas County, they've hired snitches who are known liars. They pay snitches. They in one case tried to frame a man for first-degree murder, and fortunately, the jury laughed it literally out of court. The county attorney has kept people locked up when he knew that they hadn't committed the crime, and there is a lawsuit in a situation like that now in Douglas County. So when these prosecutors come in here and talk like you're talking about, well, somebody did this and they've got to pay the price for it, there are other people look beyond what the narrow scope of the prosecutor is to what's going to happen in the institution and after the prosecutor is not even in office anymore. Those people in the prison have to deal with these individuals. The Legislature, as the chairman pointed out, is being asked year after year to come up with more money to pay just for incarceration for people who maybe shouldn't have been in prison in the first place. And I know that there's discrimination in charging and plea bargaining and sentencing and in convicting. So I'm not impressed by your cold-blooded approach to say, somebody did this, lock them up, and it's up to them to decide what they are going to do when they get on the outside, when the society is responsible for the plight of that person. Senator Pedersen has talked from time to time about how when somebody is released, they might get a \$100 and maybe a change of clothes and is sent out there and may not even know how to use a modern telephone. And you would say, well, if they hadn't gone to prison in the first place, they could have kept up with changes in technology and they'd know how to use the telephone. If they don't know the bus schedule, they would have known if they hadn't committed the crime. Here's what I'm getting to. You are like a sounding board

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because you are sent here to represent all of the county attorneys. They took the position that you're articulating to us. They have a representative on this board or committee that Senator Bourne mentioned. I just want you to know, and you can take it back to your organization, that there is at least one person who is not swallowing what the county attorneys have said. And you know something else I have seen? When DNA has indicated that person ought to be released, the county attorney says, we don't think so. We did a good job, and we don't think that person ought to be let out. I don't know whether you've been before the committee more than two or three times because I remember only one other time for sure, but you haven't been here a large number of times, so I haven't seen you enough times to have anything against you as an individual. And I hope you understand that today. But you're not here expressing your opinion. You're speaking for an organization, so I want you to have something, if they have you report back, that you can tell your organization about my attitude toward them and their approach. I think they're coming out formally against this bill without having something to present to the committee as an alternative is not doing the complete job. You all understand the system. You all are the ones who send people to prison, and you all are in a position to see what is really not working. And it would seem to me that it would be beneficial for us for certain if from you all's position of experience and expertise you could make some suggestions. It's hard for me to believe that anybody could be a prosecutor, be conversant with the system, and not have developed some notions of things that are not working as they should, other than saying, well, they don't stay in prison long enough. This final thing: I know when I rock back, people think I'm through. (Laughter) I file complaints against lawyers, and recently the court has adopted what they call proportionality review. They're going to look at what has been done in the case of other lawyers. They're going to look at all mitigating factors, and if they can find any reason to grant mercy to a lawyer who has violated ethics, then that's what will be done, and the lawyers like that. But I think they should have less slack than anybody else. They're the only ones who can function as a lawyer. They know what their ethical requirements are, yet the court wants to give them a break. But when lawyers are in position to drop the hammer on somebody else, that's what we get. And if you want to

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respond, you can, because I don't want to just say all that and not give you a chance to say anything back.

TIM HOEFT: Well, I guess, simply, I think that I don't believe that my testimony was cold-blooded and I think that my suggestion would be not necessarily that this concept won't work, but maybe, as Senator Pedersen suggested, maybe an overhaul of the parole system itself so that those services are available through the corrections system instead of creating another bureaucratic monster, another administration for us to fund. Maybe that money would be better spent through a system that's already in place. And if that system needs to be overhauled so that it's more effective, then that's what should be done.

SENATOR CHAMBERS: Well, what I've gotten from you, and maybe I was tuned in to some place else, that people can't use this excuse that they have a problem because they didn't get the benefit of certain services, and that the violation of the law carries certain punishments, consequences, which means incarceration, and those kinds of things. That was the bulk of what I got from your testimony.

TIM HOEFT: I probably should have clarified. Sometimes, maybe that is a legitimate excuse, but I think there are also times where people come out and they just want, society as a whole seems to want to blame everybody for their failures rather than step up and take accountability for them.

SENATOR CHAMBERS: How many ex-offenders have you talked to who were released?

TIM HOEFT: Probably, I've had three stop in my office and speak with me.

SENATOR CHAMBERS: And were they giving you excuses and saying society is responsible for me going to jail?

TIM HOEFT: No. They were thanking me for sending them to jail because it gave them the opportunity to kick their habit and become productive citizens.

SENATOR CHAMBERS: So then where did you get your basis for saying that they come out here and they want to blame

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society for all their problems?

TIM HOEFT: Some of the literature that I've read indicates that that's one of the arguments in favor of reentry court is that...

SENATOR CHAMBERS: So then, your County Attorneys Association took their position on the basis of literature that they have read?

TIM HOEFT: Well, there was also input from the other county attorneys. There was 28 county attorneys that attended the legislative meeting.

SENATOR CHAMBERS: And did they say that they had talked to these people and they had given this excuse and blamed society?

TIM HOEFT: I did not ask that question, Senator.

SENATOR CHAMBERS: Well, next time, they'll know that whoever comes here will be asked the questions by me.

TIM HOEFT: I will ask those questions.

SENATOR CHAMBERS: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Other testifiers in opposition? Are there any neutral testifiers? Senator Brashear has waived closing. That will conclude the hearing on Legislative Bill 1257. Senator Landis to open on Legislative Resolution 254. Oh, okay. I guess, Senator Landis, there is another group wanting to come in, so maybe we'll wait just a minute until they get settled because we want to hear every word that you have to say.

SENATOR LANDIS: Oh, yea. And they're all proponents, every...

SENATOR BOURNE: Senator Landis, whenever you're ready.

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SENATOR LANDIS: Thank you. Senator Bourne, members of the Judiciary Committee, David Landis, principal introducer of LR 254CA, representing "The Garden District." A constitution is the source and the location of limitations on the power of government. It's where we put the limits and the walls that we build around a government to keep it focused and within legitimate boundaries. I am proposing in this amendment that that boundary exists with respect to infringements on privacy by that government of two and only two kinds. The language reads this: This state shall not make or enforce any law which infringes upon or interferes with the privacy of the person, family, home, property, documents, correspondence, or information of any person unless the rights of another are directly infringed or unless public safety can be ensured by no lesser means. In other words, out of the business of government, when government intrudes on the privacy of an individual, it may do so for two reasons: for the public safety and because there is harm or infringement to another. Where an individual's privacy is not implicated, this language does not operate. Not long ago, the federal government by executive order put together a total information program to be run by John Poindexter, a guy who had been implicated earlier on in the Iran-Contra scandal. And the goal was for the federal government to merge all of its databases into a single database, which could then be scoured for trends. No particular purpose other than merging all of them to see what they could learn if they merged everything that the government knew about us in one place. I think that implicates privacy. If the public safety is implicated, then, if there is a lesser infringing mechanism, you can't use that kind of a mechanism. Otherwise, if the public safety needs to be assured in that way and it's legitimate, that's fine, or if there is projected infringement of the rights of another, harm to another, then it would be appropriate to interfere with an individual's person, property, documents, correspondence, or information. One question people ask is how far can government go. And we don't answer that question very well. We say something like, well, as far as, you know, you trust your public and legislative representatives, or whatever. I would just as soon say that this is a standard that I'm prepared to live by, and I think the state would endorse. I think the public would support this amendment, because I think the public is concerned about their privacy, and they're concerned about

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the cumulative power of government. I cannot find a provision in the state constitution that would stop this legislature from saying, you may not smoke in your own home. Well, there's a reason why we wouldn't pass that law. It might not get 25 votes. And yet, if it could get 25 votes, there wouldn't be a limitation to that law. There isn't, in that I can find in our state constitution, a prohibition that says, if 25 senators said so, you would be required to make a statement as to your religious affiliation on your drivers license. Now, we might not do that, but there is no ground rule that says, you know what, that goes further than we need. The public safety isn't implicated by that, and there is no harm to another. This standard says, if you're going to infringe on privacy, under those circumstances, you can do so when another is harmed or infringed upon or when the public safety demands it. I think that's a legitimate standard. I offer it to this committee and I offer it to the state of Nebraska.

SENATOR BOURNE: Thank you. Questions for Senator Landis? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Senator Landis, thanks for bringing this resolution, because I think it's a, it could be, and could make for a fascinating discussion. I want to almost start it right here if I could. You laid out, pretty eloquently, obviously, as you always do, the standard that you are looking for here. And no assumptions made on my part, but I'm trying to, I guess, get a grip on how this could relate with what we deal with on a daily basis in regard to the Bill of Rights. I mean, if, I would suppose that there's many that believe that what you're specifically talking about is covered by our Bill of Rights, more specifically, the first ten amendments to our Bill of Rights. Supreme Court has spoken about that implied intent, if you will, in the past, in regard to privacy. So, you know, and again, with no assumptions, I mean, the Bill of Rights in your eyes is almost not sufficient, Senator, I mean, that we need a supplement like this to take implications by the Supreme Court and say, you know, we think they know what they meant in regard to these Bill of Rights, but, you know, we're just going to solidify it in the state of Nebraska? I mean, or am I assuming too much, I guess, is the question, I guess.

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SENATOR LANDIS: Well, you might ask yourself whether or not you think you have constituents who feel that under our existing regime of law that government is too intrusive into their private lives. I wonder if you have constituents who believe that. I do. And trying to get to that issues, given our existing regime of law, are there a number of constituents who are concerned about government being more intrusive than, even though they're committed to do so now, than what the public supports? Do I think the existing Bill of Rights is sufficient? The answer is no, otherwise I wouldn't propose this. I do think this is that limitation on state government, so it's not identical, although, certainly the Bill of Rights applies to all of us. And it would serve to limit the state government as well. But this, I think, would extend beyond the Bill of Rights in that context.

SENATOR FRIEND: And you would probably agree that because of that, what probably, this is a philosophical argument that I would suppose, with some, could be a really tough sell. And I guess my question would be then, further, the Fourth Amendment specifically, Dave, and, I'm sorry, I'll let you finish your, keep your train of thought, the Fourth Amendment specifically does, I mean, it does lay out some things that I think are implied in this green copy language. I mean, wouldn't you agree? You know, are we...

SENATOR LANDIS: It's in the area. In fact, the Fourth Amendment is one of the bases for which Justice Brandeis talked about the existence of a constitutional right of privacy, which later became recognized in us. *Griswold v. Connecticut*. But that constitutional right of privacy has been limited to matters of contraception, family planning, abortion. That right of privacy has taken its way into that angle. And by the way, I think a fair question is how much does this get implicated by this language, and I'll be happy to answer that question. However, I've got to say, conservatives generally say, we don't want an intrusive government. I'm taking that concept and saying, yup, let's stick it in the Constitution and make it the standard. Now, it's true there will be lots of people who dispute that, but for rough, tough conservatives like you and I, Mike (laughter), I think we should be able to overcome them. But, if, for some reason, you might be a, you know, a crazy, wild-haired liberal or something that wants an intrusive

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government, you probably would hate this idea. I don't.

SENATOR FRIEND: I'm virtually speechless. (Laughter)
Virtually.

SENATOR LANDIS: What I'd love is if it was literally speechless, but it's just virtually speechless.

SENATOR FRIEND: Virtually, virtually, and that, no, look, that helps. I think that this could be a very good discussion. I just, language like this is an enigma. I don't what happens...

SENATOR LANDIS: Congress will make no law abridging the freedom of speech. There's a tough one. By the way, it has, you might say, what does that mean? Fair enough. That's the language of constitutions. They're the language of standards and idea, and they get played out over time.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: Senator Landis, welcome to the committee. I have no doubt that you have already anticipated a question that I am going to ask.

SENATOR LANDIS: Maybe.

SENATOR FOLEY: I think you have. There's an organization called Planned Parenthood. They're thrilled with this constitutional amendment. Why do you suppose that is?

SENATOR LANDIS: I think, and I don't know, because I haven't been in communication with them, nor did I draft it in consultation with them, that they would think that there is a possibility that you could get a state constitutional right to protect the right to have an abortion. I don't see it being guaranteed by this language, and I didn't draft it for that purpose, but I think there's a chance. And I think it depends on this language: This state shall not make or enforce any law which infringes upon or interferes with the privacy of the person, family, home, property, or documents, or information of any person unless the rights of others are directly infringed. You notice that the word is "others."

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Okay? It doesn't use the word "person," as they do in Roe v. Wade, which implicates the 14th Amendment. It says "others." If that gets interpreted in a "others" means persons in 14th Amendment rights, I think they would argue that there is a state right to an abortion. If "others" were interpreted, however, with a broader, expanded view of what "others" constitutes other than, let's say, the use of the word "persons" in the 14th Amendment, or even "citizens," for example. Then it could be entirely possible that you'd have the other side of the coin. In other words, I think this is an open question for a court to determine. And, in fact, I don't think the language here implies one or the other. I think it's an open issue, which, by the way, I think is fair game for a court to take a look at that and say, what does that mean against the the public values that we have?

SENATOR FOLEY: I think that's a fair answer. Essentially, what you've said, if I can paraphrase, is that, ultimately, the court is going to decide what these words mean...

SENATOR LANDIS: That's true.

SENATOR FOLEY: ...vis-a-vis abortion.

SENATOR LANDIS: Yeah. And by the way, that would be true, would it not, of any, not only constitutional, but statutory provision that we did.

SENATOR FOLEY: Sure.

SENATOR LANDIS: Courts have the last say in what the language means.

SENATOR FOLEY: But the foundation of Roe v. Wade is hinged on privacy rights.

SENATOR LANDIS: It is.

SENATOR FOLEY: And if the U.S. Supreme Court were to somehow walk away from Roe v. Wade and turn this issue back to the states, then litigants at the state level would go to their state supreme court for an interpretation, and this would...

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SENATOR LANDIS: And this would allow, in fact, both sides of that argument to make a claim that there was a state protection for their point of view, and our court would tell us what it meant.

SENATOR FOLEY: Yeah. I don't hold you in any way responsible for the work of Planned Parenthood. I'll just tell you, you probably already know this, that Planned Parenthood has an e-mail campaign underway now. We're all receiving, at least the members of the committee are receiving, canned e-mails asking us to support...

SENATOR LANDIS: Is that who's been sending me those e-mails? Because I've been getting the same list.

SENATOR FOLEY: Well, I'll tell you how you're getting it, because if you go to the Planned Parenthood web site, there's an e-mail generator on the web site, one, an e-mail to send to the members of this committee asking us to support it, and then a second e-mail directed to you...

SENATOR LANDIS: To thank me?

SENATOR FOLEY: ...to thank you for your work. So, and again, I'm not holding you responsible for their work, but it's clear that Planned Parenthood sees this as a tool in their arsenal.

SENATOR LANDIS: I wouldn't doubt that they would. I think there is a line of argument by which they would be able to make that claim, and they could look into this language and see that possibility. I don't think you can look in this language and guarantee that, however, because it isn't drafted for that purpose. But I would acknowledge that it's there.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Senator Landis, the U.S. Supreme Court has said repeatedly that the U.S. Constitution provides a minimum standard and states can go beyond it in ensuring the rights of the people. Senator...

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SENATOR LANDIS: Friend.

SENATOR CHAMBERS: ...Friend (laughter) has a bill that is designed to inhibit to the extent possible demonstrations with reference to funerals and those types of things, and some of us got letters from those whose family includes a gay or a lesbian person. But that was not what motivated Senator Friend, nor was he motivated strictly by the fact that people are demonstrating at the funerals of dead soldiers, but those demonstrations called to his attention that a broad problem exists. So when a remedy is offered, anybody who falls within the gamut can benefit from it. Would you agree?

SENATOR LANDIS: I would.

SENATOR CHAMBERS: But that doesn't mean that abortion is the only question, or that people who want abortions are the only ones interested in their privacy protected.

SENATOR LANDIS: Let me give you an allied building on the question that you asked application. Let us imagine that the state of Nebraska put on their employment form a declaration of sexual orientation. What would keep the state Legislature from passing such a law? Nothing that I know of. What would stop us from creating a driver's license that said, what is your sexual orientation? Nothing. Now, we may not choose to do that, but I think it's appropriate for government to have limitations.

SENATOR CHAMBERS: Right.

SENATOR LANDIS: And I don't think the power to do that should be in our hands because I think it can be misused.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Senator Landis and Senator Chambers, that's an analogy, and probably not a bad one. However, I just had a, oh, I don't know, maybe an amendment to his idea in that, I think what we're doing here is operating in a little different manner. My goals and objectives in regard to that particular bill are well, you know, well-documented. But also a part of the goals and objectives are laid out in regard to that bill are that I

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don't want to infringe on anybody's free speech rights. I mean, we all know that, we've known it from executive committees, and anybody that's been involved in this. I think where you can draw the difference in the analogy is when you're specifically putting language into a resolution that says, hey, this is going to be fundamental. You have a fundamental right to privacy here. My point, originally, when I asked the first question is, there are all kinds of things that courts and legislatures gain in regard to just, hey, this is inferred. I mean, we're just going to pull this out of here because this is what it looks like. This is what this looks like.

SENATOR LANDIS: Yeah.

SENATOR FRIEND: Total, I mean the analogy, I understand where he's going. I just don't think it plays here, because you're asking specifically to throw some green copy language...

SENATOR LANDIS: Absolutely. I believe there is a fundamental right of privacy. I believe it. I think it is, and it has been inferred out of the federal Constitution, but I think it was inferred because you're taking a look at what I think the public of this country generally feels, which is that government can be too intrusive into the lives of individuals. That's the theme that created the inferred federal right of privacy, which I think is somewhat problematical because of what is the origin? I have no difficulty in announcing and supporting, I believe that's the right idea, and I'll be happy to put it to a vote of the people as to whether or not they believe they should have, affirmatively, promised to them by their own language, not by the actions of a judge, the right to be left alone as a person in their home, in their papers, in their correspondence, in their information, from intrusions by government. I believe it and I want it written out. Absolutely.

SENATOR FRIEND: Yeah, and that's legitimate, and you've made that clear. I wanted to make clear, just for the record, that I looked at that opportunity with that bill to say, look, within the framework of this big picture Bill of Rights that we have, what are my options here? And this could be an option. I mean, the bill, you know, we've got a

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bill that's still not out of committee because we are looking for that fine balance. If I were to come out with a resolution that said, and we're going to put it into our constitution, you will not picket anybody's funeral, totally different discussion. And I guess I just wanted to, you know, for the record, and I'm sure Senator Chambers understood that. But there's a fundamental difference between what you're doing and what I was trying to accomplish.

SENATOR LANDIS: By the way, I think that's true. I acknowledge that difference.

SENATOR BOURNE: Senator Chambers.

SENATOR FRIEND: You want to go outside? (Laughter)

SENATOR CHAMBERS: Now, here's what I was going to say. Even if we put into the state Constitution that there can be no picketing, we would run up against the federal Constitution, federal court decisions, and federal law. So we can put something in our Constitution, but it has validity only so long as it doesn't conflict with the federal Constitution. Nothing that Senator Landis is offering here would conflict with the federal Constitution. So I'm not saying that just any and everything that we put into the Constitution will be valid. But when you have a situation where it can be shown that the government is being very intrusive, when the Constitution says that that there should not be certain invasions of people's rights without a warrant, so to speak, or under oath or affirmation, yet people can be wiretapped without a warrant. There's something in the way of stronger protection that is needed other than just sometimes even an act of Congress. And as Senator Landis said, but maybe not these words, the Constitution is the bulwark between the government overstepping its bounds and the rights of the people. The public doesn't belong to the government. People don't belong to the government. But the government, because of its power and its coercive force has to be restrained, and the Constitution is the way to do that. So if there are invasions of the people's privacy, then the Constitution is the way to protect. And the reason I'm saying this, I'm not sure what I said before was misunderstood. And that triggered Senator Friend's comments. But to make to crystal

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clear what I'm saying, I don't see any conflict between what you're offering and what is allowed under the U.S. Constitution. And that's why I started by saying, the U.S. Constitution sets a floor. A state cannot do anything in the way of depriving people what the federal Constitution promises, but the state is authorized to go as far beyond the Constitution of the United States in protecting citizens' rights, granting privileges as it chooses to go. And I, for one, am in favor of putting in the state Constitution a specific recognition of privacy and the right to be, have privacy, with the exceptions that Senator Landis built in that would take into consideration the greatest good for the greatest number, so to speak. If rights, by implication, are already found in the Constitution, but not everybody agrees, but they agree that those rights should exist, I don't see anything wrong with asking the public, do you want to vote on whether or not we should state explicitly in the Constitution that you have these rights instead of leaving it to argument or interpretation by a court? If I hadn't said that before, and I'm not, you know, picking a battle here. I'm just trying to make clear what it was that I was trying to say in the first instance.

SENATOR LANDIS: Actually, all three of us agree. These two things are not identical. I mean, that was the point that I think you were making, Senator Friend. I would acknowledge and I think you're distinguishing those two situations as well.

SENATOR BOURNE: . Fair enough. Further questions? Thank you.

SENATOR LANDIS: Thank you.

SENATOR BOURNE: First supporter. If there are other proponents, please make your way to the front row and sign in, please. Welcome.

DAVID WILLIAMS: (Exhibit 9) Good afternoon. My name is David Williams in support of LR 254CA. I have an unabridged version of my comments with an attachment there. I want to make it clear from the start that I am here totally on my own, as a private citizen. I don't represent any organization. I don't represent any company. My associate, Robert Lange, is going to speak later. We brought this to

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Senator Landis' attention, again, totally on our own without any political affiliation or any other people behind it. What I'm going to stress here, and I'm going to try to go through these fairly briefly, I think there's an historical background and it helps me understand it if I set that forward. The right to privacy is not a new right, some modern, 21st century creation. But while right to personal privacy has always been considered a fundamental part of our democratic society, as we said before, nowhere is it explicitly enumerated in either the U.S. or Nebraska constitutions. In the early days of the republic, the lines of private property were generally sufficient to protect individuals against undue government intrusion. But with the advent of telephones, microphones, and cameras at the end of the 19th century and the advanced communications technologies of the late 20th century, the power of the government to monitor and collect information about individuals has increased dramatically. Likewise, it was during the early part of the 19th century that government began to take on the role of regulating citizens' conduct for a variety of reasons. It was in 1890 that the soon-to-be-famous future U.S. Supreme Court Justice Brandeis set forth the issues very plainly 116 years ago: That the individual shall have full protection in person and property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection.... Thus, in very early times, the law gave a remedy only for physical interference with life and property. That's all they knew. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint, physical restraint, and the right to property secured to the individual his lands and his cattle. Later, however, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually, the scope of these legal rights broadened, and now the right to life has come to mean the right to enjoy life--the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession--intangible as well as tangible. And I just wanted to point out that the right to privacy, a lot of people talk about Roe v. Wade or Griswold v. Connecticut, actually was a Nebraska case, out of Nebraska, in 1923, in Meyer v. Nebraska, where the United States Supreme Court first addressed the issue. It didn't

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use the word "privacy," but they talked about the right to liberty, and it's essentially the same thing, was the first time this was brought up. That court at that time said: While this court has not attempted to define with exactness the liberty thus guaranteed...without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary, or without reasonable relation to some purpose within the competency of the state to affect. Again, just to repeat what Senator Landis said, I think everybody in this state, well, not everybody, but virtually everybody in this state and the country, agrees that there is a right to privacy. The purpose of this amendment is simply to put it in explicit terms in the Constitution in so-many words so that it's not left up to courts, and that each case isn't analyzed on a different basis every time there's a, whether it's motorcycle helmets or the smoking ban, whatever, it's analyzed in a very consistent way. Also, attached to my comments are the sections from the ten states that have specific rights to privacy in their constitution, and the quoted part and highlighted part.

SENATOR BOURNE: Thank you. Are there questions for Mr. Williams? Senator Chambers.

SENATOR CHAMBERS: Mr. Williams...

DAVID WILLIAMS: Yes.

SENATOR CHAMBERS: ...what year was that quote from that you gave us, toward the (inaudible)?

DAVID WILLIAMS: The Brandeis one?

SENATOR CHAMBERS: Uh-huh.

DAVID WILLIAMS: Eighteen-ninety.

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SENATOR CHAMBERS: Okay. It said the right to marry, right? Are you familiar with the case Virginia v. Loving?

DAVID WILLIAMS: Yes.

SENATOR CHAMBERS: And what year, if you know?

DAVID WILLIAMS: That's not from a court. That was from Brandeis in a law review article. That was not a Supreme Court case that I read from.

SENATOR CHAMBERS: Right, and you made that clear. But he was stating what he thought that right included.

DAVID WILLIAMS: Yes.

SENATOR CHAMBERS: And he was a respected person at that time.

DAVID WILLIAMS: Yes.

SENATOR CHAMBERS: But legislatures did not accept that as being valid...

DAVID WILLIAMS: That is correct.

SENATOR CHAMBERS: ...and the right to marry was not one that was granted until the U.S. Supreme Court said that, based on race, you cannot prohibit people from marrying. And Nebraska had a law against interracial marriage until probably the fifties.

DAVID WILLIAMS: That is correct.

SENATOR CHAMBERS: So, even though as long ago as a brilliant legal mind such as the one you quoted felt that certain things obviously are included in these concepts, when you get to the real world, they are not, in reality, included at all when it comes to practice. So even though we might all believe that there is a right to privacy, and it will will be respected, that is not necessarily so. Would you agree?

DAVID WILLIAMS: That is correct. I agree totally.

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SENATOR CHAMBERS: So all this is doing is saying that idea we all seem to take for granted is simply going to be stated explicitly.

DAVID WILLIAMS: That is correct.

SENATOR CHAMBERS: Okay.

DAVID WILLIAMS: And that everybody is going to be treated the same way, and fundamentally fair.

SENATOR CHAMBERS: But one thing, for all those people of the caucasian persuasion, I'm not interested in getting any of your daughters to marry me. (Laughter)

SENATOR BOURNE: Further questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. My oldest daughter is 12, so she isn't marrying not only him, she ain't marrying anybody. (Laughter)

DAVID WILLIAMS: Maybe in a few years?

SENATOR FRIEND: All right. (Laughter)

SENATOR CHAMBERS: I'd have something to say about it, though.

SENATOR FRIEND: He isn't rich enough.

SENATOR BOURNE: Move on.

SENATOR FRIEND: Do you...good to see you again. Now, do you think that, you provided language for the state Constitution recognizing a privacy right, at least abbreviated language. These are all quite different. I think one of the things that concerns me, and I can just sum it up, is that defining the right to privacy, everybody thinks they know, I mean, what they believe a right to privacy is. I would almost guarantee you could walk out of this room, poll everybody, and they're going to tell you different things. So, that's not a concern? Or is it, especially in a constitution? I mean, in statutory law, we can define the meaning of what those statutes are. Here,

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we're, you know, those guys have established this. I mean, it's up for grabs. That concerns me.

DAVID WILLIAMS: No, I agree that probably people are going to have different opinions, and you can see by the different state statutes, there's no uniform law on the right to privacy. But just because people have different opinions about the details of a particular constitutional provision, I think the consensus is that that right is there, and whether or not these exacts words, these 52 words encapsulate it the best way, I suppose, we can talk about that. But I think that right is definitely expected by the people and it's just a matter of getting to the words that say that. And I think this does a good job because it definitely sets up the right and sets up the exceptions. Some of the other statutes just sort of set up the right and don't necessarily address the exceptions, and I think it's important that the exceptions are there, but they're written in such a way that it's not so detailed that the constitutional amendment goes on forever, but they give you fair notice of what it is that a legislature can do as far as legislation. So again, just because people have differing opinions as to the details doesn't mean that we should not have an amendment in itself.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Further questions? Seeing none, thank you.

DAVID WILLIAMS: Thank you.

SENATOR BOURNE: Next testifier in support.

ROBERT LANGE: (Exhibit 10) Thank you. Good afternoon. My name is Robert Lange. I'm also here in my own capacity as a private citizen. I happen to be a lawyer, but I'm certainly no constitutional expert or authority. I've passed out my written statement for you to look at. In the interest of time, I'm not going to go into the detail that I cover in there, and instead I'm going to focus on a couple of points. Government intrusion into privacy takes many forms. Secret surveillance of our communications, examination of our library records are just a couple to mention. These are serious and real intrusions and interferences into our private lives and decision making. I'm concerned as a

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private citizen about the trend of more and more of this type of thing taking place, and with the process and the manner in which the decisions are being made to enact these laws and these executive decisions. I'm concerned about not having an adequate debate and deliberation about these initiatives. I'm concerned that we have focused on particular issues at a particular moment in time and that we may be losing the bigger picture. These efforts and initiatives are intended to protect us, and are well-intentioned, but we can create an unintended general atmosphere of government oppression by going too far with these efforts. As our individual privacy continues to be eroded, it will be harder and harder to arrest this trend. And history tells us that this power can be abused and will be misused. This is human nature. We saw it many years ago during the Nixon administration, and I'm sorry to say, I believe we're seeing it again today. Recently, on the matter of the extension of the USA PATRIOT Act, our own Senator Chuck Hagel recently stated, and I'll quote, "When government continues to erode individual rights, that's the most dangerous threat to freedom there is." Senator Hagel called it far more dangerous than terrorism. Upon learning of the President's claim of authority to order domestic wiretapping without court approval, Senator Hagel said, "If in fact this is true, then it needs to stop." Those are my concerns for this subject and why I am here to support this today. I think Senator Landis and David Williams did an excellent job of explaining what this about, how it's intended to work, and with that, I'll be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Lange? Seeing none, thank you.

ROBERT LANGE: Thank you.

SENATOR BOURNE: Welcome.

DICK HERMAN: Chairman Bourne and members of the Judiciary Committee, my name is Dick Herman. I'm a citizen of Lincoln. I have no attachment with any group, save for a little background ten years ago when I was with the Constitution Revision Commission of this state, so I have some familiarity with topics being discussed. That commission put things, I think, 17 or 18 amendments to the

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state Constitution, including our state Bill of Rights, before the Legislature. A number of them were advanced to the electorate. Several of them were passed, and they are now part of our state Constitution. One, which our group discussed at some length and advanced to the Legislature but the Legislature denied was a generic right of privacy, because we did not, in our judgment, have one. There is no right of privacy explicitly in the federal Constitution. Our two bills of rights, the federal Constitution's Bill of Rights and the state Constitution's Bill of Rights are not exactly equal. They're not the same. We have things in our state Constitution which are not in the federal Constitution in terms of limitations and authorities. So I was very glad to see this amendment that Senator Landis proposed, and the standards in which he offered in this document. If it got to the floor of the Legislature, I am sure there would be a good deal of discussion, and there might be more things put in it and some things taken out. But that's up to the Legislature. My general view is, because this is so late in the session, this isn't going to go anywhere. If it gets out of the committee, I think it would be grand as in advancing to the next Legislature. I view this document as really a torch passed on to future Legislatures. And I don't know, there's several of you who won't be here anymore. Landis won't be here anymore, so he can't carry the ball, but I hope there would be others to have a real interest in this constitutional right of privacy in the state Constitution. Can't do anything about the federal Constitution. Our document that we discussed in our commission left it up to the courts, really, in a very broad sense to determine the exclusions. I did a little bit of reviewing before I came here, and being a friend of history, I discovered that James Madison, in the first Congressional Congress, was talking about something which can well be interpreted as a right of privacy. His concern then was that no abridgement of the right of conscience. Two or three times, they had amendments dealing with the right of conscience, and finally they settled on what is now our First Amendment dealing with no national religion and the establishment of religion and nothing to deny people their own religious persuasions. Madison ultimately felt that that was sufficient as a right of conscience. They make fascinating reading, let me tell you. Something was mentioned here today about the first time the U.S. Supreme Court dealt with a question of conscience and religion was

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Meyer v. Nebraska, which happened in Hamilton County in 1924. Our Revision Commission offered to the Legislature to change our constitution, which now prohibits, I think the Senator Aguilar was on the Government Committee at the time, that you have to teach only in English, whether it's in public school or private school. An amendment changing this was put to the electorate. The electorate rejected it. Senator Stuhr, two years later, put essentially the same document for the electorate. The vote was a little closer, but they again rejected it. So Meyer v. Nebraska, 1924, stands even though the state of Nebraska doesn't pay much attention to it. I'm sure I've taken up more of your time, but I'll be glad to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Herman? Seeing none, thank you. I appreciate hearing the historical perspective and your participation in that review, so...

DICK HERMAN: Thank you.

SENATOR BOURNE: ...appreciate your testimony. Next testifier in support. If there are other proponents, if you'd make your way to the front row. Welcome.

LELA SHANKS: (Exhibit 11) Good afternoon. My name is Lela Shanks and I live at 2761 Randolph Street. I'm here today as an American citizen to speak in support of this amendment. My support is based on my personal experience with the FBI when I was a 35-year-old housewife and mother working in the civil rights movement in Kansas City, Kansas, in the 1960s. One day in 1963 when I was home alone with my 3-year-old son, Eric, there was a knock at the door and three big FBI men stood without a warrant asking to be admitted into my home. Surprised, to say the least, I hesitated at first, not knowing what to do. But in my naivete, I thought they surely would not harm me with my young son there. It helps to remember that these were the days when it was the duty of the law enforcement officers to enforce racial segregation laws. I decided it was best to unlock the screen door and let them in. They told me I was under investigation for possibly having committed a federal crime. The crime was that I had peacefully picketed the federal building. The FBI also went on my late husband Hugh's job. He had not picketed the federal building, but

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he was under investigation nevertheless. Our phones were tapped. We knew this because we could pick up the receiver and listen to the men talking about us on the line. Our home was entered when we were not there, and our gas was turned off. My husband and I were afraid to even talk to each other in our bed. City officials threatened to declare us unfit parents and to remove our four children from our custody. This is the first time in my life that I knew the true meaning of terror, all because we were in a peaceful movement calling for equality, freedom, and justice under the United States Constitution. We later learned that such illegal tactics were being used routinely by government officials on civil rights workers throughout America. These tactics erode trust in government. Today, sections of the PATRIOT Act now codify what everyone, what yesterday was reserved primarily for African-Americans and other people of color. These are the kinds of actions that the founders were fleeing from. I respectfully call upon this committee to support Constitutional Amendment LR 254CA. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Shanks? Seeing none, thank you. Appreciate your testimony. If you just set them on the edge, we'll have a page get...thank you, very much.

AMY MILLER: (Exhibit 12) Good afternoon. My name is Amy Miller. I am the only person apparently here who is a paid lobbyist. I work for the American Civil Liberties Union of Nebraska, and I have to say it's very difficult to follow the moving testimony of someone who actually has had their privacy violated. The reason the ACLU supports LR 254 is because, as we've all discussed, we all have that inherent sense of a privacy right. Supreme Court Justice Brandeis said, as long as 1928 ago, that every person has the right to be left alone. But since those words aren't in the U.S. Constitution, there's no guaranteed protection here in Nebraska. And yet we do have that inherent feeling that we should have those protections. Our state law and state policy already supports this concept. As in my written testimony, you'll see we have a number of statutory sections in our state laws that talk about the right to privacy. Ironically, though, those laws only protect us from the actions of private individuals. If I violate your right to privacy, you have recourse. If an actor of the government of any level within the state of Nebraska violates my

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privacy, there is not necessarily an inherent right to recourse under Nebraska Law. LR 254CA would amend that. As discussed by the proponents earlier, we would be in good company with other states as diverse as ranging from Alaska to Florida to Montana who have already put into their state constitutions similar protections. I think given the fact that you have in the U.S. Constitution only the explicit privacy right of the Fourth Amendment, and cases interpreting that the Ninth Amendment may extend additional protections in the areas of contraception, marriage, family relationships, child rearing, education of one's children, and the right of a family to live together, it becomes clear that unless we have additional, explicit protections in our state Constitution, that with changes on the U.S. Supreme Court, if there is a rollback in the interpretation of a penumbral right, such as the Ninth Amendment, then we in Nebraska would be left without that additional right of privacy. I'd be happy to answer any questions you may have.

SENATOR BOURNE: Are there questions for Ms. Miller? Seeing none, thank you.

AMY MILLER: Thank you.

SENATOR BOURNE: Next testifier in support.

KENNETH WINSTON: My name is Kenneth Winston, last name spelled W-i-n-s-t-o-n. I guess I'm the other lobbyist appearing on behalf of this, in support of this proposed constitutional amendment. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club and also Nebraska Library Association in support of LR 254CA. Obviously, I don't have, I'm not going to, don't have the kind of eloquent testimony that Miss Shanks presented, or I'm not going to try to discuss all the legal aspects, because I think all of those things have been touched on previously. I just want to make a brief statement in support on behalf of both organizations. The Sierra Club supports the rights of privacy of individuals from government intrusion. And that's just a basic stance. And the Library Association is supporting this in particular because of provisions regarding protecting documents and information used by individuals in a library context, and there's been a great deal of concern about that in the last two years. And so we're in support of that, as well. Would be glad to answer

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questions that I can.

SENATOR BOURNE: Thank you. Are there questions for Mr. Winston? Seeing none, thank you.

KENNETH WINSTON: Thank you.

SENATOR BOURNE: Next testifier in support. Any testifiers in opposition? If there are other testifiers in opposition, if you'd make your way to the front row, I'd appreciate it.

JIM CUNNINGHAM: Senator Bourne and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm executive director and registered lobbyist for the Nebraska Catholic Bishops Conference appearing in opposition to LR 254CA. Our opposition is based on what we do not know and cannot reasonably ascertain about this proposal, and also on what we do know and can reasonably conclude about the proposal. We can reasonably conclude that this proposal, the proposed amendment to the Nebraska Constitution, is extremely broad, and that the authority placed in the state courts pursuant to this amendment would likewise be extremely broad. Conversely, what we do not know, not able to reasonably ascertain, is what the scope is and what the contours are of this amendment in relation to public and social policy. How far would this extend in application? What would it mean in terms of practical consequences? What we do not know and cannot reasonably ascertain is why this broad amendment is necessary, what is the full extent, if there is any extent at all, of areas of privacy in which there is not adequate protection currently in Nebraska. What will this protect that is not being protected through public policy currently or could not be protected by carefully crafted legislation in Nebraska? What we do know and can reasonably conclude is that this broad amendment would push a lot of issues and decisions into the courts. This would be an abrogation of a significant amount of legislative authority to the courts. I looked at the annotations that are along with the constitutional amendments, privacy amendments in states like Florida, California, Alaska, and Montana. And here is just a brief listing, I'm not sure that it's comprehensive, a brief listing of all of the subject matter implicated by the right to privacy in these states that have a privacy right in their constitution: abortion, adoption, business

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records, criminal procedure, sexual conduct, illegal substances, children, parental rights, professional client privileges, weapons, obscenity, pornography, campaign disclosure, confidentiality and disclosure of records, medical treatment, assisted suicide, warrantless surveillance, and blood tests. What we do not know is what the Nebraska courts would rule on particular cases in these areas implicating this broad right to privacy. But what we do know and can reasonably conclude is that the ability of this Legislature to respond to particular policy issues and needs in these areas and other areas in tailored ways would be severely circumscribed by this amendment. Also, we do know that this amendment in states such as Florida, California, and Alaska has been the basis for striking down laws that regulate abortion and abortion funding. And with that, I'll close and open up to any questions you might have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Cunningham? So, Mr. Cunningham, the ten states that have adopted this or a similar provision in their constitutions, you've seen a change in abortion law?

JIM CUNNINGHAM: I've only researched the states of Florida, California, Alaska, and Montana, and most definitely there have been cases that relied upon the right of privacy to strike down legislative enactments either dealing with the regulation of abortion, parental consent, parental notice, judicial bypass, or informed consent, and also public funding for abortion.

SENATOR BOURNE: If you have any information on it, if you've done research,...

JIM CUNNINGHAM: Sure.

SENATOR BOURNE: ...if you'd forward that one, I think that...

JIM CUNNINGHAM: Sure

SENATOR BOURNE: ...would be beneficial.

JIM CUNNINGHAM: I want to emphasize, though, that that is one area, and there are numerous areas that have been

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implicated by the state constitutional right to privacy, and that's what I tried to list for you.

SENATOR BOURNE: I understand. Further questions? Seeing none, thank you.

JIM CUNNINGHAM: Thank you.

SENATOR BOURNE: Other opponents? Are there any neutral testifiers? Senator Landis, I believe, has left, so he waives closing. That will conclude the hearing on LR 254CA. (See also exhibits 7, 8) To open on Legislative Bill 782, Senator Mines is here. As Senator Mines makes his way forward, could I have a showing of hands of the proponents of this next bill? I see one. Are there any opponents? I see none. If the proponent would make his way forward and sign in, please. Whenever you're ready, Senator Mines.

LB 782

SENATOR MINES: (Exhibit 13) Thank you. Thank you, Mr. Chairman, members of the committee. My name is Mick Mines and I proudly represent the 18th Legislative District, and I'm the principal introducer for LB 782. This one isn't difficult to understand. This request, or this would change the legal age to purchase tobacco from 18 years of age to 19. And research has shown that by raising the age from 18 to 19, we would be curbing access to tobacco for teenagers. This will restrict access to tobacco products by 18-year-old high school students, who pass them on to younger students as well. According to the American Cancer Society, more than 90 percent of regular adult smokers began smoking in their teens. And more than 80 percent of adult smokers began smoking before age 18. And there are a litany of reasons why we start to smoke. I started to smoke at a very early age. And primarily this bill would, because we have high school students that are 18 years of age, this would increase the legal limit from 18 to 19. Now there are some other states that have done this. There are four: Alabama, Alaska, Utah, and New Jersey, and Suffolk County in New York has done it as well. In each of those states, the rate of teenage smoking has dropped in the last five years, and that's according to the Centers for Disease Control and Prevention. In Alabama, as an example, the smoking age was

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raised in 1999 at a time when 37 percent of the Alabama high school students smoked at least one cigarette a month. And in 2003, it dropped to 23 percent. Technically, the bill amends or updates language in Section 28-1418 to Section 28-14-29 and combines Section 28-1421 and Section 28-1422, which results in outright repeal of Section 28-1421 and harmonizes a whole bunch of other regulatory provisions. The rewrite of these sections includes all the provisions in the old language except the last two sentences of Section 28-1421. When we submitted this to bill drafters, they said, hey, you're opening up this statute, and we do have some amendments that we would like to offer, transferring Section 28-1,420 to Section 28-1,426, and Section 28-1,428 to Section 28-1,429 out of the criminal code, chapter 22, to personal property in chapter 69. There is a smokeless tobacco sample prohibition is already in chapter 69, and a regulatory licensing program and prohibition against cigarettes in vending machines is out of place in the criminal code in Section 28. I passed around amendment that would also place the last two sentences of Section 28-1,421 back into statutes on page 3. This has to do with prohibiting the bill of "bidi" cigarettes and other perfumed or drugged cigarettes, and was unintentionally left out of the updating process. Again, the basis behind this is to make it unlawful for kids 18 years of age to legally purchase tobacco products, raise that to 19, and it would curb the amount of access to kids in our high schools. With that, I would, that's the end of my testimony, Mr. Chairman.

SENATOR BOURNE: Thank you. Questions for Senator Mines? You're getting off easy. No questions.

SENATOR MINES: Thank you.

SENATOR BOURNE: First proponent. And if there are other proponents, if you'd make your way to the front row and sign in, please. Welcome.

MARK WELSCH: (Exhibit 14) Thank you. I do have some handouts for the committee.

SENATOR BOURNE: If you'd just set them on the edge of the desk, the page will get them.

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MARK WELSCH: Thank you, Chairman Bourne and esteemed Senators. My name is Mark Welsch. I'm the president of GASP of Nebraska. My last name is spelled W-e-l-s-c-h, first name ends with a "k," M-a-r-k. I live at 5611 Howard Street in Omaha, Nebraska. I'm here to support this bill. Tobacco is a scourge among our children in Nebraska. This bill would take one step in the right direction by raising the age from 18 to 19 years of age. The letter than I'm passing out is about what Senator Mines spoke about briefly. This is a letter from 2001 from then-Attorney General Stenberg talking about "bidi" cigarettes. "Bidi" cigarettes are little chips of tobacco, not really long strands like you see in regular cigarettes. They're wrapped in a leaf, usually coming from India or some other countries also manufacture these "bidi" cigarettes. They have three times as much nicotine, five times as much tar as a normal American-made or normal cigarette, and they're sold in child-pleasing flavors such as grape, strawberry, orange, and vanilla. Our current state law does not allow these to be sold in Nebraska, and I'm just here to support Senator Mines' amendment that would keep that in his bill. His original bill took that language out our current statute, so, you know, I'm just here to support the continuation of that prohibition of selling "bidi" cigarettes here in Nebraska. This letter that is addressed to James Jansen, the Douglas County Attorney, also went to all of the other county attorneys in Nebraska. So they all, at that point in time, knew about this and so, I don't, I've not been able to find any "bidi" cigarettes being sold in Nebraska lately, so I hope they're not.

SENATOR BOURNE: Fair enough. Questions for Mr. Welsch? Seeing none, thank you.

MARK WELSCH: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? If there are other opponents, if you'd make your way forward.

WALT RADCLIFFE: Senator Bourne, members of the Judiciary Committee, my name is Walter Radcliffe, and I'm appearing before you today as a registered lobbyist on behalf of U.S.T. Public Affairs. Lest I be accused of hiding behind a corporate veil, U.S.T. Public Affairs is a wholly owned

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subsidiary of the United States Smokeless Tobacco Company, which manufactures Copenhagen and Skoal smokeless tobacco, as well as some other products. I appear in opposition to LB 782. I do so because there are only four, we basically have uniformity in the United States as far as age of majority except for the four states that Senator Mines mentioned. In fact, since 1999, the states of California, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, and Tennessee have all considered raising the age from 18 to 19 and have rejected that. The F.D.A., the Federal Drug Administration has stated that the age of which by law a person is capable of being legally responsible for his or her acts and is entitled to the management of his or her own affairs and the enjoyment of civic rights is age 18. With surrounding states having age 18, if this bill were to pass, it would be very easy for people who are 18 years of age to go across the border and purchase products. I'm sure I'm not telling you anything you don't know or aren't aware of. I do want to digress a little bit in my testimony, and it's my understanding, and if I'm wrong, you can forget anything that I'm about to say. I've not seen it, but it's my understanding Senator Mines, when I asked him earlier in the week, said he was unaware of it, but that there's going to be an amendment offered to the bill which would address some other issues relating to tobacco products, such as their location of sale and that type of thing. I would just submit to the committee that if somebody wants to do that particular type of legislation, (A) this isn't the place to do it from the standpoint of germaneness or constitutionality, and secondly, I would think that a bill should have been brought. And as I say, if I'm incorrect in what I'm saying, I'll make my own motion to strike. And with that, Senator Bourne, I'd be happy to attempt to answer any questions the committee or its members might have.

SENATOR BOURNE: Let's have a little clarity before we go to the questions. There was an amendment handed out, and it's Amendment 2402.

WALT RADCLIFFE: I had not seen that. No, the ones that Senator Mines, thank you, the one, the amendments that Senator Mines spoke of in his opening, those are not the ones to which I'm referring. My understanding is...

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SENATOR BOURNE: Okay.

WALT RADCLIFFE: ...those amendments were principally bill drafter amendments.

SENATOR BOURNE: So hold on a second. Hold on. So hold on. So AM 2402 was handed out by Senator Mines.

WALT RADCLIFFE: Yes. No, and those were bill drafter amendments, and those are not ones that I am speaking about. apologize if I misstated anything there.

SENATOR BOURNE: Okay.

WALT RADCLIFFE: Thank you, though. I apologize if I misstated anything there.

SENATOR BOURNE: Questions for Mr. Radcliffe? Senator Chambers.

SENATOR CHAMBERS: Just for clarification, because I didn't hear what the amendments were, but the committee can add amendments which would be germane which, if on the floor were offered may not be deemed so.

WALT RADCLIFFE: I understand that rule, Senator Chambers. The point that I was making was that in order, I was referring to the constitutional provision regarding the time at which something has to be before the Legislature. I fully understand that any committee amendment to any bill under the rules is deemed to be germane. And I believe that's what you were saying, and I agree with you.

SENATOR CHAMBERS: So you're not talking about an amendment that would be in this committee?

WALT RADCLIFFE: It may very well be offered to the committee as a notice. Whether this committee would adopt it or not, I'm also, very honestly, this is something that I have been told about. Hasn't been presented, I noticed somebody signed up to...

SENATOR CHAMBERS: (Inaudible) so that won't push you too far. I thought maybe I had missed an amendment that had

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been posed here.

WALT RADCLIFFE: Oh, no. No. No. No. No.

SENATOR CHAMBERS: Okay, then the, you don't (inaudible).

WALT RADCLIFFE: That's why I said, if I'm wrong in what I'm saying, I'll make my own motion to strike what I have said.

SENATOR CHAMBERS: I see what you mean. Okay.

WALT RADCLIFFE: But since I won't get a chance to respond, because I think somebody is testifying neutrally, I thought I'd do something preemptive.

SENATOR BOURNE: Further questions for Mr. Radcliffe? Thank you.

WALT RADCLIFFE: Thank you.

SENATOR BOURNE: Next opponent?

JACK MOORS: Chairman Bourne, members of the committee, I am Jack Moors, M-o-o-r-s. I'm here as registered lobbyist for the Nebraska Association of Tobacco and Candy Distributors. I have no testimony. We wish to just be on record as opposed to the bill.

SENATOR BOURNE: Thank you. Questions for Mr. Moors? Senator Chambers.

SENATOR CHAMBERS: I just have one. Why are you opposed to it?

JACK MOORS: Because the problem we're having in Omaha primarily with the border bleeding on cigarettes today. The city, my distributors in Omaha distribute in Council Bluffs and they've seen a 37 percent increase in the sale of cigarettes in Council Bluffs because of the tax advantage. Our concern is this won't have a total effect in Omaha because of the they'll be able to go across the bridge and buy cigarettes.

SENATOR CHAMBERS: But it's not that it...

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JACK MOORS: Otherwise, Senator, it would be self-service where we say why we oppose it.

SENATOR CHAMBERS: But you're not interested in making sure that people of a younger age be allowed legally to smoke?

JACK MOORS: We're concerned with that. Yes, we do.

SENATOR CHAMBERS: Because if they have to be a year older, then that's the smaller market available in Omaha and the state of Nebraska?

JACK MOORS: Yes, sir.

SENATOR CHAMBERS: Is that what the issue is?

JACK MOORS: Yes, sir.

SENATOR CHAMBERS: Okay. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next Opponent.

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, 209 South 19th Street, Omaha, Nebraska, that's M-o-y-l-a-n, appearing today representing the Nebraska Licensed Beverage Association, which is a state association of liquor retailers. And I think almost all of the 4,200 or 4,300 of them probably sell the bulk of the cigarettes throughout the state. We're here in opposition to that. Second reason is, in the Omaha area, there happens to be a couple of tobacco stores just across the river in Council Bluffs. And I have a couple of clients over there, I go over there occasionally, and probably over half of the cars are Omaha cars buying their cigarettes over there. By the same token, buying their gasoline. Of course, one reason they're buying their cigarettes over there is the tax differential. But it will be easy for all the children to go over there. Now I guess, when is a person old enough, you know, to be on their own? We let them drive at 16, 17, 18. Most of them when they're 18 are out of school and are working. They're pretty much emancipated at that time. A lot of them are drafted into the service, are already in the service at age 18. And I guess adulthood really starts probably at 17 or 18 anymore. So I guess the reason we're

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opposed to it.

SENATOR BOURNE: Thank you. Questions for Mr. Moylan?
Senator Chambers.

SENATOR CHAMBERS: But Mr. Moylan, if the state policy which relates to the health of any segment of its population should not be determined by what happens in another state, should it? Is that what should determine our policy, what they do in Iowa?

JIM MOYLAN: No. I wouldn't say that it should determine the policy here. But all I'm saying is if you raise it to 19, they'll be able to get the cigarettes anyhow just across the border, so.

SENATOR CHAMBERS: Well, if we make smoking dope against the law, they can still get dope someplace, so should we make it legal?

JIM MOYLAN: No.

SENATOR CHAMBERS: I just want to be sure that I'm following the argument. You know what I thought you were going to say when you were here for the Licensed Beverage Association?

JIM MOYLAN: No.

SENATOR CHAMBERS: That one of their scientists had found a way to drink tobacco and you wanted to be sure that you were not cut out. (Laughter) I knew better,...

JIM MOYLAN: Thank you very much. I would not be cut out. (Laughter)

SENATOR CHAMBERS: ...but I can deal with Jim (inaudible).

JIM MOYLAN: I would not be cut out. (Laughter)

SENATOR BOURNE: Further questions for Mr. Moylan? Seeing none, are there opponents? Are there any neutral testifiers? I assume you've signed in?

TIM KEIGHER: Yes, I did.

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SENATOR BOURNE: Thank you.

TIM KEIGHER: (Exhibit 15) I have some handouts, sir. Good afternoon, Chairman Bourne, members of the committee, my name is Tim Keigher. That's K-e-i-g-h-e-r. I appear before you today as the registered lobbyist for Altria Corporation, which is the parent company to Philip Morris USA and to Kraft Foods. My handout here is some amendments we are proposing to the committee. We have talked to Senator Mines and he did not have a problem with this, and we appreciate him allowing us to introduce these amendments to his bill. Simply, the first one is on page 2, Section 1, line 10, insert the word "possesses" after the word "uses" and before the word "tobacco" so that possession of cigarettes from anyone under 18 or 19, if you pursue this bill, becomes a violation, a Class III misdemeanor. Also, on page 4, additional definition to (d), subsection (3), which would read as follows: Self-serve display of tobacco products means a display that contains tobacco product and is located in an area where customers are permitted and where the tobacco product is readily accessible to a customer without the assistance of a salesperson. And then number (3), on page 8, Section 6, add a subsection (2) which reads as follows: No holder of a retail tobacco license shall display any tobacco product in a self-serve display of tobacco products. Basically, what that does is not allow any self-serve of tobacco products. Philip Morris is very involved in prevention of youth tobacco and feels that these are two methods that would help in not allowing youths to have access to tobacco. So we would appreciate your consideration on that, and I would be happy to answer any questions.

SENATOR BOURNE: Okay. Are there questions for Mr. Keigher? Seeing none, thank you.

TIM KEIGHER: Thank you.

SENATOR BOURNE: Other neutral testifiers? Is this the last neutral testifier? Looks like it.

KATHY SIEFKEN: Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Kathy Siefken, S-i-e-f-k-e-n, and I am the executive director of the Nebraska Grocery Industry Association here in a neutral

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capacity today. If this bill is passed and the age is increased to age 19, we can do that. We would need some time to retrain our people. We've been training them for 15-20 years to not sell to 18-year-olds. The age limit would be raised and so we would need time to make sure we got everybody trained, but it's not something that would be impossible to do. We are opposed to the amendments that were just submitted, and basically what those amendments do is require that tobacco be self-serve. And what we've seen across the state is those retailers that are having problems with theft have put the tobacco behind the counter. They have taken the steps that they needed to take to protect the product from minors coming in and stealing them. In Omaha, they actually passed an ordinance, and I don't know how many other cities have passed ordinances, but when they passed that ordinance in Omaha, our members in Omaha didn't have a problem with it simply because everything was already behind the counter. My concern comes from the small retailers that are in outstate Nebraska that have one aisle going up and one aisle coming back and they're using a calculator for a cash register. These are small retailers. They know their customers. They're in the small towns that maybe have 500-600 people. Those retailers are on the verge of extinction anyway, and if you cause them or require them to remodel their stores or spend additional funds to move tobacco to a place where they don't have room anyway, it could cause a hardship. And so those communities, again, that are having trouble with theft and minor access have already taken steps to cure the problem. With that, if you have questions, I'd be happy to try and answer them.

SENATOR BOURNE: So, just for clarity, you're asking for a delayed implementation date so you can train your personnel?

KATHY SIEFKEN: That would be nice.

SENATOR BOURNE: I'm just like curious. How long does it take to train somebody to add "one" to the, just curious.

KATHY SIEFKEN: We're talking, you know, there is no age on selling tobacco, though. But you're talking about clerks that even though they know the age is 19 still sell.

SENATOR BOURNE: Okay.

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KATHY SIEFKEN: And we've done everything we can. We do free training programs across the state. And I understand, they ought to be able to do that. But when you pound it into their head for years and they get busy, and they've got four people standing in line,...

SENATOR BOURNE: Fair enough.

KATHY SIEFKEN: ...they make a mistake.

SENATOR BOURNE: Appreciate that. Further questions? Seeing none, thank you.

KATHY SIEFKEN: Thanks.

SENATOR BOURNE: Other neutral testifiers? Senator Mines to close.

SENATOR MINES: Thank you, Mr. Chairman, members, and thank you for your patience. This isn't a hard bill to understand. It's raising the age that kids can purchase tobacco products from 18 to 19. Most seniors in high school are 18 years old. They haven't been drafted yet, and they are a vehicle for other kids in school to obtain tobacco products. So the concept is, let's remove it from that age level. Let's put it to 19 and get it out of the schools. I have not seen the amendment that was offered by Mr. Keigher. We did talk casually about it, but I have not seen the language, so I can't really say that it's good or bad. And that's it. Thank you.

SENATOR BOURNE: Questions for Senator Mines? So just so I understand, AM 2402 was an amendment that you gave to the committee.

SENATOR MINES: That's correct.

SENATOR BOURNE: And then one of the first opponents, Walt Radcliffe, he was talking about some amendments. Was the amendments he was referring to the ones from Mr. Keigher?

SENATOR MINES: I believe that Mr. Keigher brought to you.

SENATOR BOURNE: Okay. Okay.

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SENATOR MINES: And again, I've not seen that.

SENATOR BOURNE: Understood. Further questions? Seeing none, thank you.

SENATOR MINES: Thank you.

SENATOR BOURNE: That will conclude the hearing on Legislative Bill 782. I think the committee will stand at ease for ten minutes.

(RECESS)

SENATOR BOURNE: Senator Aguilar is here to open on Legislative Bill 914.

LB 914

SENATOR AGUILAR: Thank you, Senator Bourne, members, what members? (Laugh) My name is Ray Aguilar, R-a-y A-g-u-i-l-a-r. This bill, LB 914, will place in statute permissive language allowing a court to order restitution in law enforcement and property owners for the cost of clean up and property rehabilitation caused by a clandestine drug lab when a person is convicted of an offense under the Uniform Controlled Substance Act involving the manufacture of a controlled substance. Although there is nothing currently barring this practice, a clear statement allowing it will encourage a judge, county attorney, and other court personnel to inquire with law enforcement and property owners about this cost and make it part of the restitution and sentencing. Clandestine laboratory is defined as the location or site where glassware, hearing devices, or other equipment or precursors, solvents, or related reagents which are intended to be used or are used to unlawfully manufacture a controlled substance. Rehabilitation is defined as the actions to contain, collect, control, identify, analyze, disassemble, treat, remove, or otherwise disperse all substances and materials in a clandestine laboratory including those found to be hazardous waste and any contamination caused by such substances or materials. These definitions are the same as in LB 915, that will authorize Nebraska Health and Human Service System to set standards for property rehabilitation after a meth lab. That's the

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long and the short of it. Hopefully, it will encourage the judiciaries to look at doing reimbursements for people that are affected by this. Thank you.

SENATOR BOURNE: Thank you, Senator Aguilar. Now is the bill that you prioritized or...

SENATOR AGUILAR: No. LB 915 is the bill that I prioritized, and it was heard in Health and Human Services.

SENATOR BOURNE: Okay. I knew it.

SENATOR AGUILAR: This is kind of the follow-up to that.

SENATOR BOURNE: Okay. Thank you. Are there proponents of the bill? Are there any opponents? Are there any neutral testifiers? Senator Aguilar to close. Senator Aguilar waives closing. That will conclude the hearing on Legislative Bill 914. Senator Howard...there she is.

SENATOR HOWARD: You worked very fast on that last bill.

SENATOR BOURNE: I know. I caught you.

SENATOR HOWARD: It was quick in-and-out. This will be fast, too.

SENATOR BOURNE: Welcome.

SENATOR HOWARD: Thank you, sir.

SENATOR BOURNE: Senator Howard to open on LB 984.

LB 984

SENATOR HOWARD: (Exhibit 16) Thank you. Good afternoon, Chairman Bourne and members of the Judiciary Committee. For the record, I am Senator Gwen Howard and I represent District 9. I am before you today to introduce LB 984, the Worker Freedom Act. The goal of this bill is to prevent worker intimidation and to protect workers' religious and political freedoms. LB 984, the Worker Freedom Act, would prohibit employers from mandating employee participation at meetings or events convened for the purpose of expressing

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the employer's religious or political beliefs, to include the employer-held beliefs regarding organizing. Under the provisions of LB 984, employers would be prohibited from requiring attendance at such meetings and prohibited from imposing disciplinary action upon employees who choose not to participate in these events. There are testifiers here today that can share with you more information about this bill and why it is necessary. The freedom to make independent religious and political decisions is fundamental to being an American. I urge your support in protecting these freedoms, and ask your favorable consideration of LB 984. And I do have a letter that was given to me by staff representative Jay T. Boyle of Communications Workers of America. And this will give a bit of an explanation. It's an incident that recently happened, and he wanted to make sure that this was shared with the committee.

SENATOR BOURNE: Thank you. Are there questions for Senator Howard? Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Senator Howard, can you give us an example of what's happening and where it's happening that makes this bill necessary?

SENATOR HOWARD: Actually, that's such a good question because this letter clearly gives an example. These employees were pulled together for a meeting. It's the Alltel company, and were told of the company's choice of governor for this state, and were taken completely by surprise, and of course, not everyone would be of the same mind. And when asked about equal time for the other side, they were met with silence. It's that sort of situation.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR HOWARD: Thank you. Thank you, sir.

SENATOR BOURNE: First proponent.

KEN MASS: Senator Bourne, members of the committee, my name is Ken Mass, M-a-s-s, representing Nebraska state AFL-CIO and here today in support of LB 984. LB 984 if it becomes law would make it unlawful for an employer to require workers to attend meetings where the employer lectures on religion or political beliefs, including beliefs about

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joining a union. It prohibits the discharge and discipline of employees who report such coerced meetings. Basically, this bill today would give employees the freedom to walk away from political, religious fears from the employers, and would bar employers from firing them. It would also, when workers want to form a union, 92 percent of employers force them to sit through mandatory one-sided presentations of the employer's belief about unions. While this bill would protect workers from forced indoctrination and mandatory meetings, it does not limit employers' free speech. It just keeps employers from forcing the employees to attend mandatory meetings about beliefs relating to the job performance and under the threat of discipline or discharge. Employers still could pass out literature and employees could still hear about employers' belief at voluntary meetings. The bill contains the exemptions for organizations whose primary purpose is political or religious. And no worker should be forced to choose between losing their job or enduring a lecture which conflicts their own religious beliefs, including beliefs about joining a union. A similar bill has been introduced in three states this year, Colorado, Hawaii, and Illinois, and was passed last year in Connecticut in the House. So it is being introduced in different states. And here today to ask for the support of the committee to turn the bill out to General File. Thank you. Any questions?

SENATOR BOURNE: Thank you. Are there questions for Mr. Mass? Seeing none, thank you.

KEN MASS: Thank you.

SENATOR BOURNE: Next proponent. Welcome.

CLARENCE KING: Clarence King, I go by C.J. King, I live in Omaha, and I'm with the International Brotherhood of Electrical Workers, represent utility and city workers and construction workers throughout the state. I've been on staff for roughly seven years. I worked at Omaha Public Power before that, and when I came on staff, my initial assignment was to assist in organizing workers throughout the state. I just wanted to share some experience that when I first meet with workers and talk to them about what's going to happen with captive audience meetings, they usually have an incredulous look that no, my employer wouldn't be

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that way. And as it gets later into the campaign, typically, it's a disgusted look that, will these ever end? The meetings themselves are usually one-sided. It's not a question and answer period. It is an opportunity for the employers to just put forward their views on the union. Whether they're truthful or not, they're allowed to put them forward because it's a mandatory meeting. Once the employees have made up their mind, they don't have the opportunity to ask questions. They don't have the opportunity to not attend the meeting, and because at the time they have no collective bargaining agreement, they're at-will and can be fired just for not attending that meeting. I believe this bill is fair to the workers as well as to the employers. They're still allowed to have their meetings, but an employee that has made a decision isn't forced to attend these meetings and suffers no repercussions for not attending, for just simply having made up their own mind. So we are very much in support of this bill.

SENATOR BOURNE: Thank you. Are there questions for Mr. King? Seeing none, thank you. Next testifier in support? First testifier in opposition.

BILL MUELLER: Chairman Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in opposition to LB 984 as introduced. Our concern is not about the issue that Mr. Mass and the other witness testified about. We are concerned not about union activities, but we are concerned about the definition of political matters on page 2, lines 14 through 17 of the bills, "Political matters includes political party affiliation or the decision to join or not join any lawful, political, social, or community group or activity or any labor organization." We're concerned that you could read that so that an employer could not hold a meeting for something like the United Way, because I think under the definition of this, "political matter" could include the United Way so that there could be an argument that the employer could not hold a meeting and express that employer's opinion about activity in things like the United Way. We're also concerned that you could read the prohibition in Section 3 as prohibiting an employer from holding an educational session on discrimination or on religious or political discrimination and express an opinion that the employer will not tolerate that. So again, our

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concern is not about the labor ramifications of this, but about the broad definition of political matters. I'd be happy to answer any questions the committee may have.

SENATOR BOURNE: Thank you. Questions? Senator Aguilar.

SENATOR AGUILAR: Mr. Mueller, I believe that's a bit of a stretch to associate political with the United Way. For one reason, you know, United Way meetings are not mandatory, no matter what company you work for. They're completely voluntary. I just think that's a bit of a stretch. You may respond if you want to.

BILL MUELLER: Senator, I would agree in the abstract. I'm not saying that the United Way is a political activity. I'm just saying that the definition in the bill of "political matters" includes social or community group or activity, and by doing that, there are prohibitions in the bill. I'm not saying that the United Way is a political activity. I just think that the definition in the bill is broad enough to encompass something like the United Way. That's an example.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: We both agree that we're talking about mandatory meetings?

BILL MUELLER: Yes.

SENATOR CHAMBERS: Okay. And I don't want to be argumentative, but why would an employer insist, make it mandatory that employees come to a meeting, and I'm going to deal with lines 14 and 17, and I'm not going to go on and on and on, mandate that they come to a meeting even if it is about United Way, although like Senator Aguilar, I know that that's voluntary. But if that is going to be the case, why would the employer want the right to mandate that people to come to such a meeting?

BILL MUELLER: I suppose that an employer may want to try and educate their employees about something like the United Way, might want to urge them to participate. And the only way that you can do that would be to require that they

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attend.

SENATOR CHAMBERS: Well, wouldn't that, then, be like coercion on the part of the employer, dictating to people what they ought to contribute to in order not to run into problems with the employer? So, I wouldn't want to see that even if it was about the United Way, I wouldn't want to see it mandated. Did you mention that you see a problem with the term "community group or activity" also?

BILL MUELLER: Yes.

SENATOR CHAMBERS: Okay, give me an example of what mandatory meeting that is legitimate with reference to those things.

BILL MUELLER: Well, I mean, again, the one that I think falls into that general category is something like the United Way. I guess if I...

SENATOR CHAMBERS: Well, I don't give to the United Way myself. I give to a lot of charities, but I pick the ones that I want to give to. And when they send stuff around the legislators, I don't even open it. I just trash it because I know what I'm going to give and not give. I wouldn't require anybody who works for me to give to any particular charity, so if that's all the Bar Association is worried about, the testimony is, it might be relevant, but it's not probative, as you know.

BILL MUELLER: And I...

SENATOR CHAMBERS: Okay, go ahead.

BILL MUELLER: Secondly, getting away from the United Way, I do think that you could read this bill to say that an employer could not hold a session and require employees to attend if you were going to talk about religious or political discrimination...

SENATOR CHAMBERS: Why would an employer...

BILL MUELLER: ...and state in a...

SENATOR CHAMBERS: ...why would an employer need to call a

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mandatory meeting for that?

BILL MUELLER: I think you could call a meeting like that to try and educate your workers on discrimination and what was acceptable and what was unacceptable.

SENATOR CHAMBERS: Suppose you had a handbook and you listed these things out? What, I understand what you're saying, but is that really what this bill is concerned about?

BILL MUELLER: I don't think that it is.

SENATOR CHAMBERS: So if somebody were required by the employer to attend a meeting where the employees were being informed about the company's policies, I think you could mandate that, and you could say, we don't tolerate religious discrimination. We don't tolerate sexual discrimination, or whatever else it is. But if it's a meeting to try to push a certain view of those things that's different, and remember, what is the remedy available to an employee? If the...

BILL MUELLER: It's a, I'm sorry.

SENATOR CHAMBERS: Go ahead.

BILL MUELLER: I'm sorry. It's a limited remedy under the bill. I will admit that.

SENATOR CHAMBERS: Right. And the employee would have to prove that the meeting that was called and which that employee was compelled to attend was violative of what the bill overall is aimed at. So do you think a court would say that, if a company said, we have an orientation period, and during this period, every employee must attend. And at this hearing, we're going to explain what kind of conduct is not allowed. And if you violate these rules, you stand to be sanctioned, and we'll have a graduated system. So they mention, we're not going to tolerate any politicking on the premises. We're not going to tolerate any discrimination on the premises, and went on like that. I don't think that's wrong. I think that should be done.

BILL MUELLER: As do we.

SENATOR CHAMBERS: But this bill is not talking, I don't

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believe, about informing people of those things.

BILL MUELLER: Again, I'm confident that that's not the intent of the bill. I do think that under Section 3, that that activity could be challenged. I would acknowledge that the remedy is lost wages, lost time, reclaiming your position. I suppose the only damage is that an employer would risk having assessed against them might be attorney fees.

SENATOR CHAMBERS: My last comment, and then a question. Would you look in line 22 on page 2 where the communication is for the purpose of giving the employer's opinion. Not a standard or a rule or regulation that governs employment there, but the employer's opinion about these things. Does that word "opinion" lessen your opposition, or it remains the same?

BILL MUELLER: Well, we were aware that opinion was there. And I think that if I express my position on something, I think that I'm expressing my opinion.

SENATOR CHAMBERS: But that is different from the standards and requirements for the job, proper decorum and conduct in the workplace. That's not a matter of opinion. Those are requirements. Would you agree with that?

BILL MUELLER: I would agree with that.

SENATOR CHAMBERS: So that would lift those out of the opinion realm, would you agree with that?

BILL MUELLER: We would hope that a court would rule that way.

SENATOR CHAMBERS: Okay. That's all that I would have.

SENATOR BOURNE: Further questions? Seeing none, thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Are there opponents? Are there neutral testifiers? Senator Howard to close.

SENATOR HOWARD: Thank you, Senator Bourne and members of

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the Judiciary Committee. I appreciate your excellent questions, and thank you for asking them. I would ask you also to look upon this bill and weigh the merits, and hopefully find that it is a bill worth passing to the General File. So, thank you.

SENATOR BOURNE: Thank you. Questions?

SENATOR CHAMBERS: I just had one question.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Senator Howard, this bill would put a restriction on what employers can do, correct, in terms of mandating meetings that the employees have to attend for the expression of certain opinions?

SENATOR HOWARD: I would understand it to not so much to mandate the meeting, but the content...

SENATOR CHAMBERS: That's what I mean.

SENATOR HOWARD: ...that was discussed. Yes, sir.

SENATOR CHAMBERS: If employers thought that this was going to prevent them from doing what they have a legitimate right to do, is it peculiar that neither, well, you may not be familiar with Mr. Sedlacek or Mr. Hallstrom, but some people think that that was only one person until they see them both at the same meeting. But if there are no employers concerned about this, would you have any concerns based on what the representative from the Bar Association testified to? And I'm not disparaging his testimony. We need all points of view. But would it seem peculiar that if it did restrict the legitimate conduct of the employer, would it be peculiar that no employers are here to oppose the bill?

SENATOR HOWARD: Absolutely. That really makes sense to me. And I agree with your statement, that we do need all points of view. And when I was called out to the rotunda earlier to discuss this, I encouraged him to come, the individual to come in and address his points of view, which I think is his opportunity.

SENATOR CHAMBERS: That's all that I would have. Thank you,

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Senator Howard.

SENATOR HOWARD: Thank you, sir.

SENATOR BOURNE: Further questions for Senator Howard? Seeing none, thank you. That will conclude the hearing on Legislative Bill 984.

SENATOR Dw. PEDERSEN: We will now open the hearing on LB 1114. Senator Bourne will present. Senator Bourne, whenever you're ready.

SENATOR BOURNE: 1114?

SENATOR Dw. PEDERSEN: 1114.

LB 1114

SENATOR BOURNE: Thank you, Senator Pedersen, members of the committee, my name is Pat Bourne, I represent the 8th Legislative District, here this afternoon to introduce Legislative Bill 1114. This is simply a technical bill that updates certain statutes to include female pronouns in places where only male pronouns were previously used.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Any questions from the committee?

SENATOR CHAMBERS: Just a comment.

SENATOR Dw. PEDERSEN: Senator Chambers.

SENATOR CHAMBERS: I like this bill. That's all.

SENATOR Dw. PEDERSEN: Thank you, Senator Chambers.

SENATOR FOLEY: I thought we already did this bill.

SENATOR Dw. PEDERSEN: Senator Bourne, you might as well stay right there. Is anybody in favor of this bill? Anybody opposed? Any neutral? Senator Bourne waives closing. We will now open the hearing on LB 1153.

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LB 1153

LB 1153

SENATOR BOURNE: Thank you, Senator Pedersen, members of the Judiciary Committee. My name is Pat Bourne, I represent the 8th Legislative District, here today to introduce to you LB 1153. This bill would allow for the adoption of the Healthcare Improvement through Development and Adoption of Information Technology Act. The goal of this measure is to improve the quality and efficiency of healthcare here in Nebraska. The healthcare industry has not taken full advantage of information technology, and this bill is intended to develop a system where health information could be securely shared between providers. Shared information between providers would help reduce medical errors, reduce duplication of medical tests, reduce cumbersome paperwork, and overall reduce healthcare costs. The concept behind this bill is the result of a collaborative effort by members of Nebraska's healthcare industry--doctors, providers, hospitals, insurers. And I introduce this bill on their behalf. They have made a decision as a group to do an interim study, to not go forward with the legislation at this particular time, to continue to work on this over the summer. And you might see a concept such as this in the future, but I think at this time what they're asking is we do not go forward with the bill. We simply continue to study the issue.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Any questions from the committee? Seeing none, can we have our first proponent please come forward?

LAURA REDOUTEY: (Exhibit 17) Good afternoon, members of the Judiciary Committee. My name is Laura Redoutey, R-e-d-o-u-t-e-y, and I am the president of the Nebraska Hospital Association. I appear before you today as the chair of the Nebraska Health Information Initiative, which is the collaborative that Senator Bourne mentioned. The collaborative is between Nebraska's hospitals, physicians, pharmacists, Blue Cross and Blue Shield of Nebraska, the University of Nebraska Medical Center, and others who are working to create a Nebraska-based nonprofit and publicly available health information network. The collaborative has been meeting since April of 2005 and has developed the

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vision of Nebraska being a leader in the secure exchange of health information. Our goal is to share timely and accurate patient healthcare information in a secure environment to improve patient care. We have developed a series of committees and are on task to complete a business plan later this year. Patient information should be portable and move with the patient from one point of care to the other. Clinicians must have the ability to exchange information with one another whether across town or across the country. An interoperable system or a system where different information technology systems communicate to exchange data accurately, effectively, and consistently must be developed. Regional collaborations among healthcare entities and providers are required to support the overall goal of healthcare data exchange. The Nebraska Health Information Initiative is working towards the goal of providing such a secure exchange of health information. While the collaborative is supportive of many concepts contained within LB 1153, such as the need for a health information technology plan and an assessment of the impact of such a plan, we contend that the legislation is premature. On behalf of the collaborative, I ask that the Judiciary Committee consider introducing an interim study resolution to study the development of such an exchange of health information with the product to be submitted to the Legislature by the next session. Our members will work closely with the Legislature and staff as the interim study progresses, should you so desire. Thank you for the opportunity to provide input.

SENATOR DW. PEDERSEN: Thank you, Miss Redoutey. Any questions from the committee? Seeing none, thank you. A proponent? Welcome, Senator.

RON WITHEM: Thank you. Thank you, Senator Pedersen, members of the Judiciary Committee. I am Ron Withem, W-i-t-h-e-m, representing the University of Nebraska, actually here representing Dr. Steven Hinrichs, who is professor pathology at the University of Nebraska Medical Center, who had a conflict on his schedule today. I just simply wanted to be here to indicate that the university does think there's a great promise of improving medical care in Nebraska, greater efficiencies in delivering that care through the development of this electronic medical record. And as the previous testifier indicated, we are a part of

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LB 1153, 1200

this activity and just wanted to go on record indicating we want to be a part of the ongoing effort. So thank you very much.

SENATOR DW. PEDERSEN: Thank you, Mr. Withem. Any questions from the committee? Seeing none, any more proponents? Any opponents? Any neutral? Senator Bourne waives closing. (See also exhibit 36) We'll now open the hearing on LB 1200, also introduced by Senator Bourne.

LB 1200

SENATOR BOURNE: Thank you, Senator Pedersen, members of the Judiciary Committee. My name is Pat Bourne, I represent the 8th Legislative District, here today to introduce Legislative Bill 1200. It's no secret how I feel about too much government intervention in our private business. In the past, I've actively opposed legislation that would increase government regulation, including legislation that would ban smoking in restaurants. It's my position that that should be up to the market. Given my position on these issues, I'm frequently contacted by proprietors of businesses who are concerned that they will be put out of business by overzealous regulations. I was contacted earlier this year regarding complaints that were filed in Grand Island alleging violations to the Clean Indoor Air Act. It later came to light that an unusually large number of complaints were being filed by one individual, an individual that doesn't even live in that area. If these businesses, primarily restaurants and bars, were in such violation of the Clean Indoor Air Act so as to endanger the health of the employees and patrons, I find it interesting that no one else filed a complaint. I am also aware that a single individual has filed nearly 90 complaints in the Omaha area in the past two years. According to the Douglas County Health Department, complaints from the general public aren't that significant. To me, these reports of supposed violations seem more like harassment than legitimate complaints filed by business customers or employees. These large number of complaints take time and resources away from legitimate business of county health departments and could have a negative effect on genuine complaints. Could one person care so much about the health of complete strangers so as to spend hours making sure businesses comply with the

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LB 1200

Clean Indoor Air Act? In examining this situation, I think I discovered the true motivation. This particular individual that filed the complaints in Grand Island offered to help that county's health department with compliance checks for a price. The person suggested that the county could contract with him, pay him, just as the Nebraska Department of Health and Human Services did in 1999 and 2000. LB 1200 was introduced to stop this sort of action. Under the bill, a person shall be subject to a civil fine not to exceed \$1,000 for filing complaints under the Clean Indoor Air Act which are unsubstantiated or frivolous in nature. I do realize that the fine might be a little stiff and the language may be a little too broad, so I would definitely be willing to work on any of these provisions. However, I believe that this sort of action is an abuse of our law and should not be tolerated. With that, I would be happy to answer any questions that you may have.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Any questions from the committee? Senator Chambers?

SENATOR CHAMBERS: Am I allowed to laugh? I don't have any questions, Senator. Thank you.

SENATOR DW. PEDERSEN: Thank you, Senator Chambers. Any other questions from the committee or statements or outbursts? (Laughter) Any proponents? Any opponents? Any neutral? Senator Bourne waives closing. That will close the hearings for today. (See also exhibits 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35)